STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the Matter of	)	
	)	
Global NAPs, Inc.	)	
	)	
Petition for Arbitration Pursuant to Section 252(b) of The Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc. f/k/a GTE North Incorporated and Verizon South Inc. f/k/a GTE South Incorporated.	)	Docket No.: 02-0253

VERIFIED RESPONSE OF VERIZON NORTH INC. AND VERIZON SOUTH INC. TO THE PETITION FOR ARBITRATION OF GLOBAL NAPs, INC.

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I. INTRODUCTION

Verizon North Inc. and Verizon South Inc. (collectively, "Verizon "), by counsel and pursuant to 47 U.S.C. § 252(b)(3), submits this Response to Global NAPs' Petition for Arbitration of an Interconnection Agreement ("GNAPs' Petition") filed by Global NAPs, Inc. ("GNAPs") on April 10, 2002, with the Illinois Commerce Commission (the "Commission"). Verizon's arguments below are based largely on the redline changes that GNAPs made to the Verizon Template Agreement in parallel arbitration proceedings in California, Florida, New York, Pennsylvania, and Virginia. The reason for this is simple. Rather than stepping up to its burden as a Petitioner pursuant to § 252(b)(1) of the Telecommunications Act of 1996 (the "Act"), GNAPs has merely recycled here the same Petition its affiliates filed against Verizon affiliates several months ago in those other states.[1] In all of those states, Verizon affiliates have filed responsive pleadings that address the position of Verizon and its affiliates on all the disputed contract provisions. In two of those states, Verizon and GNAPs affiliates have exchanged testimony and participated in arbitration hearings aimed at resolving the same disputed contract language at issue in Illinois.

As a result, GNAPs is well aware of all the disputed contract language and Verizon's position on that language. GNAPs, however, persists in shirking its duty under § 252(b)(2) of the Act. Although GNAPs articulates only eleven narrow issues for arbitration, its redline changes reflect significant disputed contract language unrelated to the eleven identified issues. GNAPs itself admits that there are "key unresolved issues" between the Parties, and that it "has not necessarily identif[ied] all of the provisions in the attached 'redline' draft of the Template

[1] GNAPs filed Petitions for Arbitration in California and Florida on December 20, 2001 and in New York, Pennsylvania, and Virginia on January 4, 2002.

Agreement" that are disputed.[2] By not doing so, however, GNAPs' Petition fails to comply with the Act's requirement to fully set forth *all* of the issues to be arbitrated and explain the parties' respective positions on those issues.[3] For the issues that GNAPs has actually identified, moreover, GNAPs persists in misstating the real issue in dispute or Verizon's position.

Despite undefined issues and unsupported contract language, GNAPs asks the Commission to (i) "find that the GNAPs' proposed modifications to Verizon's Template Agreement are reasonable and consistent with the law" and (ii) "approve its revisions to Verizon's Template Agreement."[4] GNAPs has not provided an adequate basis for the Commission to grant the relief it seeks. In addition, GNAPs' proposed changes are contrary to its representations during the negotiations, in which GNAPs agreed to accept the Verizon Template Agreement as is, except for provisions reflecting issues where the parties had major disagreements.[5] The Commission, therefore, should reject GNAPs' unsupported request based on its representations during the negotiations and on the deficiency of GNAPs' Petition and accompanying exhibits.

If the Commission nevertheless considers GNAPs' proposed contract changes, despite its failure to properly raise or support them, the Commission should reject them on their merits. Virtually all these changes amount to corporate welfare: GNAPs is demanding that Verizon subsidize GNAPs' cost of doing business. GNAPs' proposals conflict with or impermissibly

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[2] GNAPs Petition at 6, ¶ 15. GNAPs makes this curious assertion despite the fact that in the preceding paragraph, GNAPs states clearly that it was not filing a "redline draft of the interconnection agreement" with its Petition, asserting that it would be "late-filed" instead *See* GNAPs' Petition at 5, ¶ 14. Since GNAPs "redline draft of the interconnection agreement" was *never* filed with the Commission, GNAPs' assertions in Paragraph 15 of its Petition are both incorrect and accordingly misleading.

[3] Act § 252(b)(2).

[4] GNAPs' Petition at 14, ¶ 35.

[5] *See* November 2, 2001, correspondence from John Dodge, Jim Scheltema, and Laura Schloss of GNAPs to Joseph Greenwood and Gregory Romano of Verizon, attached at Ex. C to this Response.

expand upon the duties of interconnecting carriers as set forth in the Act. By contrast, the interconnection agreement proposed by Verizon is both consistent with the Act and a fair and practical resolution of the parties' rights and obligations.

II. SUPPORTING EXHIBITS

Verizon's proposed interconnection agreement is attached as Exhibit A. It reflects the language upon which Verizon and GNAPs agree. Where Verizon and GNAPs disagree, GNAPs' proposed language is shown as struck through and Verizon's as bold and double underlined. Verizon is also attaching its proposed interconnection agreement without GNAPs' edits as Exhibit B. In addition to Verizon's proposed interconnection agreement, attached as Exhibit C are additional documents relating to the parties' negotiations discussed below.

III. NEGOTIATIONS

GNAPs presents an outdated, incomplete, and thereby misleading view of the parties' negotiations. For Illinois, GNAPs did not request that negotiations commence until September 28, 2001.[6] The negotiations history that GNAPs discusses in its Petition, however, primarily predates the Illinois-specific statutory negotiations period, with GNAPs entirely omitting the most recent several months leading up to GNAPs' April 10, 2002 Petition for Arbitration.

GNAPs correctly cites January 19, 2001, as the date of its initial request for negotiations in states other than Illinois. Although the statutory negotiations' period in Illinois commenced in late September, 2001, GNAPs suggests that it was somehow aggrieved by an alleged failure of Verizon to timely provide its Template Agreement. In addition to being outdated, GNAPs'

[6] *See* September 28, 2001 correspondence from John Dodge, counsel for GNAPs, to Renee Ragsdale of Verizon, Ex. C. GNAPs originally requested that negotiations commence on September 28, 2001 but the Parties have since agreed to extend that date. *See* March 5, 2002, correspondence from Joseph J. Greenwood of Verizon to James Scheltema of GNAPs, Ex. C.

assertion is incorrect. Verizon sent GNAPs an electronic version of Verizon's model interconnection agreement on February 2, 2001, and not April 23, 2001, as GNAPs claims, so that the Parties could use it as a basis for their multi-state negotiations.

For seven months, Verizon received only limited changes to its proposed interconnection agreement from GNAPs. During this period, GNAPs repeatedly changed negotiators. Although GNAPs' attorney, Christopher Savage, was the first point of contact with GNAPs, on February 23, 2001, GNAPs notified Verizon that Erik Cecil would be the primary negotiating attorney for GNAPs.[7] But on March 15, 2001, it was another GNAPs attorney, Gerie Miller, who forwarded discrete changes to the Verizon model interconnection agreement. Yet again, in June 2001, GNAPs introduced new negotiators, Jim Scheltema, John Dodge, and Laura Schloss.

Apparently to accommodate its changing negotiators, GNAPs sought an extension of the negotiations period in June, agreeing that Verizon should send its most recent template agreement and repeatedly promising few changes.[8] Accordingly, Verizon provided its then-current template to GNAPs on June 29, 2001. But, after obtaining Verizon's agreement to an extension of time for negotiations based on GNAPs' representation that it expected to provide only minor edits, on September 10, 2001, GNAPs provided extensive proposed changes to nearly every provision of the agreement. GNAPs' only explanation was that it wanted to go another way. Despite the fact that GNAPs took seven months to evaluate and respond to Verizon's proposed agreement, GNAPs now implies that Verizon should have more quickly evaluated and responded to the extensive redlined draft GNAPs provided on September 10,[9] which also

[7] *See* February 23, 2001, correspondence from Erik Cecil to Joseph Greenwood, Ex. C.

[8] *See* June 26, 2001, correspondence from Karlyn Stanley, Erik Cecil, and Gerie Miller of GNAPs to Joseph Greenwood of Verizon, Ex. C; July 11, 2001, correspondence from Joseph Greenwood to GNAPs, Ex. C.

[9] *See* GNAPs' Petition at 6-8, ¶¶ 16-22.

predated the first day of the statutory Illinois-specific time period that commenced on September 28.

Contrary to GNAPs' representation that it was "six weeks" from September 10 before "Verizon indicated its availability for negotiations,"[10] the Parties discussed a negotiating schedule on September 27, 2001, still before the statutory time period applicable to Illinois commenced. Ultimately, Verizon and GNAPs agreed to a negotiation and arbitration schedule to allow the parties to manage and coordinate their state arbitration schedules. Pursuant to GNAPs' original request for negotiations, GNAPs had until March 7, 2002, to seek arbitration in Illinois. Two days before GNAPs' Illinois Petition was due, on March 5, 2002, the Parties agreed to extend the request-for-negotiation date to November 1, 2001.[11]

From October through December, the parties conducted negotiation sessions through weekly conference calls.[12] Multiple calls were held during the weeks preceding the December 20 arbitration deadline for California and Florida. During that period, GNAPs agreed to negotiate from another update of Verizon's model interconnection agreement, which incorporated the FCC's *ISP Remand Order*[13] and included state-specific language for the parties to consider. Although GNAPs correctly notes that Verizon did not provide a redlined draft, GNAPs fails to note that Verizon did explain the "updates" and that GNAPs declined Verizon's offer of a

[10] *Id*. at 7, ¶ 19.

[11] *See* March 5, 2002 correspondence from Joseph J. Greenwood of Verizon to Mr. James Scheltema of GNAPs, Ex. C.

[12] GNAPs correctly notes that a November 30th session was cancelled in advance due to a "familial obligation" of one of Verizon's negotiators: the birth of the negotiator's child.

[13] *In the Matter of the Local Competition Provisions in the Telecommunication Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"). On May 3, 2002, the United States Court of Appeals for the District of Columbia remanded, but expressly did not vacate, the *ISP Remand Order* back to the FCC. *WorldCom, Inc. v. Federal Communications Comm'n*, Case No. 01-1218 (D.C. Cir. May 3, 2002).

redline. In any event, GNAPs had Verizon's proposed agreements in electronic form and could have easily produced a redlined version itself.

As the negotiations continued, GNAPs again reassessed its approach, informing Verizon on November 2 that it proposed "to narrow the focus of our discussions to issues that are of the most import to the company's business plan, and accept (with the heretofore agreed changes) the remainder of the Verizon template as is."[14] At that time, GNAPs provided Verizon with a list of "issues" rather than a redline.[15] As the parties approached the deadline for requesting arbitration in California and Florida, the parties were still discussing what GNAPs called "general principles," rather than contract language.[16] GNAPs did not provide Verizon its proposed contract language until it filed its Petitions in California and Florida on December 20, 2001.

From late December until GNAPs' filing of its Illinois Petition on April 10, 2002, the Parties have concurrently conducted ongoing negotiations while proceeding with state-specific arbitrations. During this time period, the Parties were able to reach agreement on additional contract language, including dark fiber and performance measures and remedies. On April 4, 2002, Verizon contacted GNAPs, offering to discuss the open items that remained between the Parties. Subsequently, on April 9, 2002, Verizon and GNAPs discussed several open items including the insurance, audit, reference to tariffs, and two-way trunk issues, although the parties were unable to reach further agreement at that time.

[14] *See* November 2, 2001, correspondence from John Dodge, Jim Scheltema, and Laura Schloss of GNAPs to Joseph Greenwood and Gregory Romano of Verizon, Ex. C.

[15] *See id*.

[16] *See* December 10, 2001, correspondence from John Dodge and Jim Scheltema of GNAPs to Joseph Greenwood and Gregory Romano of Verizon, Ex. C.

IV. RESPONSE TO GNAPS' ISSUES

ISSUE 1: Should Either Party Be Required To Install More Than One Point Of Interconnection Per LATA?

> **GNAPs' Position**: No. GNAPs is not required to install more than one POI per LATA and may establish a single POI per LATA. GNAPs has the right to designate any technically feasible point at which both Parties must deliver traffic to the other Party.
>
> **Verizon's Alleged Position**: GNAPs must establish multiple POIs within each of Verizon's local exchange areas to exchange traffic between the Parties.

ISSUE 2: Should Each Party Be Responsible For the Costs Associated With Transporting Telecommunications Traffic To The Single POI?

(Verizon Proposed Interconnection Agreement, Glossary §§ 2.45, 2.66; Interconnection Attachment §§ 2.1, 7.1)

> **GNAPs' Position**: Yes. Each carrier is financially responsible for transporting telecommunications traffic to the single POI.
>
> **Verizon's Alleged Position**: No. Each carrier is responsible for transporting telecommunications traffic to the boundary of Verizon's local exchange area. Verizon is not responsible for the transportation of the telecommunications traffic to a POI located outside of this area.
>
> ***Verizon Actual Position:***

GNAPs' proposed contract language for §§ 2.45 and 2.66 of the Glossary Section and §§ 2, 3, 5.2.2, 5.3, and 7.1 of the Interconnection Attachment should not be adopted. Aside from the substantive reasons for rejecting GNAPs' language (discussed below), none of the arbitration issues GNAPs identified in its Petition relate to GNAPs' proposed contract changes. As explained below, the Commission is entitled to reject GNAPs' language for this reason alone.

1. Verizon's Position on Interconnection and Cost Responsibility Issues Raised by GNAPs' Issues 1 and 2.

Contrary to GNAPs' suggestions, Verizon does not dispute GNAPs' option to designate a single point of interconnection ("POI") per LATA ***within*** Verizon's network. The real issue is whether GNAPs should be financially responsible for the consequences of exercising its option

to interconnect at only one point in that LATA. Interconnecting at a single point rather than at multiple points throughout the LATA results in the imposition of significant costs on Verizon. GNAPs refuses financial responsibility for these costs.

GNAPs' position is patently unfair. It is also inconsistent with the Federal Communication Commission's ("FCC") *Local Competition Order,* several recent federal court decisions and prior decisions of this Commission. Verizon's interconnection proposal, Virtual Geographically Relevant Interconnection Points ("VGRIP"), in contrast, promotes equitable sharing of costs when GNAPs elects only a single POI. As such, VGRIP is inherently reasonable and should be adopted by the Commission.

A. Introduction.

When a Verizon customer calls a GNAPs customer, Verizon must carry that call to the nearest point in its network in a particular LATA at which GNAPs is interconnected (the POI). LATAs typically include many different rate centers and local calling areas and the rates Verizon charges its customers are based on the costs of carrying calls within each customer's local calling area. Transporting calls to GNAPs' single POI, however, often requires Verizon to carry calls beyond the local calling scope of its originating customers, thus requiring Verizon to incur additional costs. GNAPs' proposal requires Verizon to incur these costs yet provides no incremental cost-recovery mechanism. In essence, GNAPs need not build facilities out to each local calling area because GNAPs may require Verizon to provide transport between the local calling areas GNAPs serves and GNAPs' POI. Requiring Verizon to provide that transport, and any incremental switching without being compensated for the incremental cost of doing so, however, would effectively require Verizon to subsidize GNAPs' entry into the marketplace. Such demands for corporate welfare however, are unreasonable and contrary to the Act.

Verizon's recognizes that incumbent local exchange carriers ("ILEC") must permit CLECs to interconnect at only a single point in a LATA if the CLEC so desires.[17] Interconnecting at only one point, however, does not excuse the CLEC from making economically efficient decisions about where to locate that point or from financial responsibility for the costs of that decision. The United States Court of Appeals for the Third Circuit recognized this point in *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania*:[18]

> To the extent . . . that WorldCom's decision on interconnection points may prove more expensive to Verizon, the PUC [Pennsylvania Public Utilities Commission] should consider shifting costs to WorldCom.[19]

GNAPs does not deny that its proposal would shift costs to Verizon. Rather, GNAPs would have this Commission believe that because the cost of transporting calls to a GNAPs POI is so small, Verizon should be obligated to assume those costs. GNAPs even suggests that Verizon's incremental costs of transporting calls to GNAPs' designated POI should be Verizon's responsibility because they are the "result of Verizon's network design decisions."[20]

GNAPs' logic, however, is fatally flawed in several respects. First, GNAPs is solely responsible for decisions regarding the design of its own network, as well as decisions concerning what local calling areas GNAPs elects to serve – not Verizon. To the extent GNAPs deploys a network with a small number of switches, more facilities will need to be in place to

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[17] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 at ¶ 112 (2001) ("*Intercarrier Compensation NPRM*"). As the Commission is aware, the FCC is seeking comments on its "Single Point of Interconnection Issues." *Intercarrier Compensation NPRM* ¶¶ 112-114.

[18] 271 F. 3d 491 (3rd Cir. 2001); *see also U.S. West Communications, Inc. v. AT&T Communications, Inc*., 31 F. Supp. 2d 839, 853 n.8 (D. Or. 1998).

[19] *Id*. at 518 (citing *Local Competition Order* ¶ 209). Even though GNAPs has been advised of this precedent in its other arbitrations with Verizon, GNAPs does not acknowledge the *Third Circuit's* determination that a state commission should consider shifting costs to the CLEC if the CLEC's interconnection decisions prove more expensive to Verizon. *See* GNAPs Petition ¶ 32.

[20] GNAPs Petition ¶ 35.

transport traffic to those switches. GNAPs may construct its own facilities to provide such transport or it may purchase transport from a third party, but the transport costs are primarily a function of GNAPs' network design decisions. GNAPs cannot claim that the cost burden of transporting calls to its own network is a result of the ILEC's decisions simply by unilaterally deciding not to build out its own network.

Second, GNAPs implies that the incremental costs of transporting a call beyond the originating local calling area to its POI are small and that Verizon's access charges that would normally apply to calls extending beyond local calling area boundaries are merely a "superficial concern."[21] This argument is specious. If such costs were in fact small, GNAPs would not be arguing so strenuously to avoid them. Over time, GNAPs' proposal will impose significant costs on Verizon because it will require Verizon to deliver greater and greater quantities of "local" traffic beyond the local calling scopes of its customers. The rates Verizon charges to its customers do not reflect these costs. If Verizon cannot recover those costs from GNAPs, implementation of GNAPs' proposal would put upward pressure on Verizon's retail rates. In addition, Verizon interconnects with more than 20 facilities-based CLECs in Illinois. Applied broadly, the cumulative effect of GNAPs proposal would be for Verizon to subsidize the network design model for every CLEC with whom Verizon interconnects.

B. Verizon's Proposal Equitably Allocates Transport Costs Between the Parties.

Verizon's VGRIP proposal presents a more reasonable alternative. VGRIP provides GNAPs with choices, including the option to connect physically to Verizon's network at only one point in order to exchange telecommunications traffic. However, to ensure that Verizon does not bear all the costs resulting from GNAPs' interconnection decisions, VGRIP divides the

[21] GNAPs Petition at 20, n.32.

physical point of interconnection (POI) from the point on the parties' network to which they are financially responsible for delivering traffic. The point at which financial responsible shifts from one party to the other is the "Interconnection Point" or "IP."

The IP may be at several different locations, but a typical example would be at a GNAPs collocation arrangement at a Verizon tandem wire center in a multi-tandem LATA. Typically, this IP may be outside the originating local calling area, in which case Verizon would absorb some of the additional costs for transporting the call to that tandem. This is a significant compromise for Verizon because it is willing to bear a portion of the costs associated with GNAPs' interconnection decisions.

Once Verizon delivers traffic to the GNAPs' IP, GNAPs becomes financially responsible for delivering that traffic to its switch. To provide such transport, GNAPs may either: (1) self-provision the transport by constructing its own facilities; (2) purchase the transport from Verizon; or (3) purchase the transport from a third party. For example, to deliver traffic from GNAPs' collocation arrangement at the Verizon tandem wire center back to its switch, GNAPs could purchase transport from Verizon pursuant to the provisions of the interconnection agreement (*e.g.*, unbundled network element interoffice facilities, or "UNE IOF"). Alternatively, it could self provision the transport by building out its network to the GNAPs IP and carrying the traffic back to its switch on its own network.

Under another VGRIP option, if GNAPs chooses not to establish an IP at the Verizon tandem or end office, the end office serving the particular Verizon customer who places a call would be the "virtual IP" with respect to that call. For example, assume a Verizon customer originates a call to a GNAPs customer served by an NPA-NXX associated with the same local calling area as the Verizon customer. Further assume that GNAPs chooses not to establish a GNAPs-IP via collocation at the Verizon end office or tandem. Section 7.1.1.1 provides that if

GNAPs has not collocated at the applicable switch, Verizon will transport the call from the Verizon customer all the way to the POI, wherever that POI may be located in the LATA. Yet, because Verizon must incur additional costs to transport that call all the way out to the POI (a result of GNAPs' POI decision), GNAPs should compensate Verizon for its additional costs for transporting this traffic.

In each of these scenarios, GNAPs retains its right to locate its POI at any technically feasible point on Verizon's network in the LATA. GNAPs also has a choice about where the IP is located, and it bears only a portion of the additional costs it causes as a result of its interconnection decision. VGRIP thus is inherently reasonable. It is also consistent with the parties' arrangements for traffic traveling in the opposite direction (*i.e.*, from GNAPs to Verizon). For this traffic, GNAPs proposes to deliver traffic to Verizon at its tandem or end office.[22]

In short, Verizon's VGRIP proposal prudently addresses the consequences of GNAPs' interconnection choices and provides an equitable solution to the question of who must bear the costs of GNAPs' interconnection decisions. In addition, an ALJ in California recently adopted the identical language proposed by Verizon after reviewing the same evidence presented here.[23]

C. Verizon's Proposal Tracks Applicable Law.

VGRIP is also fully consistent with applicable law. As explained above, GNAPs' choice to locate a single POI in a LATA requires Verizon to somehow transport calls to that POI. The FCC's *Local Competition Order* made clear that when a competitive local exchange carrier

[22] *See* GNAPs proposed interconnection agreement, Interconnection Attachment §§ 7.1.2.1 and 7.1.2.2 (for reciprocal compensation traffic delivered by GNAPs to Verizon, the Verizon IP will be at the Verizon tandem or end office). Verizon does not disagree with GNAPs' proposed §§ 7.1.2.1 and 7.1.2.2.

[23] *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Draft Arbitrator's Report, Application 01-12-026, at 25-26 (Apr. 2002) (attached at Exhibit D).

("CLEC") requests an "expensive interconnection," pursuant § 252(d)(1) of the Act, the CLEC should "be required to bear the cost of that interconnection."[24] This is exactly what must occur when GNAPs makes its network available to Verizon at a single POI. Although in the short run the decision to interconnect with Verizon at a single point may be less expensive for GNAPs than interconnecting at multiple points, transporting traffic to that point on a recurring basis quickly becomes expensive. VGRIP reasonably allocates this expense consistent with ¶ 199 of the *Local Competition Order*.

VGRIP is also consistent with the FCC's guidance in ¶ 209 of the *Local Competition Order*:

> [B]ecause competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about ***where*** to interconnect.[25]

VGRIP promotes economically efficient interconnection decisions by fairly allocating the incremental interconnection costs associated with a single POI. VGRIP further tracks the Act's requirements that interconnection rates be cost-based.[26] GNAPs' proposal, in contrast, removes any incentive for GNAPs to make economically efficient decisions. It simply shifts the entire cost of its GNAPs' interconnection decisions to Verizon.

Furthermore, Verizon's VGRIP offer is a generous one in that Illinois law allows Verizon to require CLECs to physically interconnect at more than one point of interconnection within a LATA. Newly enacted Section 13-801(b)(1)(B) of the Illinois Public Utilities Act (the "IPUA") provides that an ILEC subject to alternative regulation may not require a requesting carrier to

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[24] *Local Competition Order* ¶ 199.

[25] *Id.* at ¶ 209 (emphasis added). GNAPs quotes ¶ 209 of the *Local Competition Order* in its Petition but does not include this last sentence, which Verizon quotes above. *See* GNAPs Petition at ¶ 31.

[26] *See* 47 U.S.C. § 252(d)(1).

physically interconnect at more than one technically feasible point within a LATA.[27] The General Assembly clearly contemplates that ILECs not subject to alternative regulation, such as Verizon, ***may*** require a requesting carrier to physically interconnect at more than one technically feasible point within a LATA. Under the established maxim of statutory construction, *inclusion unius est exclusio alterious*, or the inclusion of one is the exclusions of another, it is clear that the General Assembly, by specifically referring to alternative regulation carriers, did not intend for non-alternative regulation carriers to be included.[28] The Commission cannot ignore the exclusion of non-alternative regulation carriers from Section 13-801(b)(1)(B). To do so would render the language in the IPUA inoperative. It would also violate a maxim of statutory construction that statutes should be interpreted in a manner that gives effect to every word, clause, and sentence and a court may not read a statute so as to render any part inoperative, superfluous or insignificant.[29]

The inclusion of only carriers subject to alternative regulation in Section 13-801(b)(1)(B) clearly indicates the intent of the General Assembly to exclude non-alternative regulation carriers such as Verizon. This is the only reasonable interpretation for this qualification in Section 13-801(b)(1)(B). If the General Assembly did not contemplate such a result, there would be no need for this condition. Accordingly, while VGRIP allows CLECs to physically interconnect at only one point of interconnection per LATA, Verizon under the IPUA could require much more.

[27] *See* 220 ILCS 5/13-801(b)(1)(B).

[28] *See, Newland v. Budget Rent-a-Car Systems, Inc.*, 319 Ill. App. 3d 453, 457, 744, N.E. 2d 902, 905 (First Dist. 2001).

[29] *See Winn v. Mitsubishi Motor Manufacturing*, 308 Ill. App. 3d 1054, 5049, 721 N.E. 2d 819, 823 (4th Dist. 1999).

D. State Commission Decisions.

GNAPs' opposition to Verizon's proposed language relating to this issue has been explicitly rejected already in California. Addressing the same contract language and the same evidence that Verizon will present here, an ALJ in California recently adopted Verizon's GRIP proposal in her Draft Arbitrator Report:

> [C]arriers are entitled to be compensated for the use of their facilities…. The CLEC must perform its own version of a cost/benefit analysis to determine whether it is more efficient to install a single POI and pay transport charges or establish multiple points of interconnection. The ILECs should not have to absorb transport and tandem switching charges as a result of GNAPs' choice to have a single POI.[30]
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> * * * * *
>
> GNAPs argument that the transport costs are "de minimis" begs the issue. Regardless of which model is used to calculate transport charges, the issue does not relate to the amount of the charge, but whether they should be paid at all.[31]

As acknowledged by the California ALJ, Verizon's GRIP proposal presents GNAPs with an opportunity to design its network as it deems appropriate but hold GNAPs accountable for the additional incremental costs caused by GNAPs' decisions.

The Public Utilities Commission of Ohio, moreover, recently addressed this precise issue in an arbitration proceeding between GNAPs, Ameritech Ohio, and Sprint.[32] Reviewing the recommendations of its arbitration panel, the Ohio Commission noted:

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[30] *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Draft Arbitrator's Report, Application 01-12-026, at 25 (Apr. 2002) ("CA Draft Arbitration Report").

[31] *Id.*

[32] *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint, et al.*, Public Utilities Commission of Ohio Case No. 01-2811-TP-ARB, et al., Arbitration Award at 3-5 (May 9, 2002) ("*Ohio Arbitration Award*").

> The Panel recommended that the Commission permit Ameritech and Sprint to charge GNAPs for the transportation of calls originating in local calling areas where GNAPs has no POI to a different local calling area containing GNAPs' POI. The Panel also rejected GNAPs' assertion that Ameritech's or Sprint's costs to provide transport are *de minimus*. The Panel reasoned that GNAPs' supporting calculations did not consider the architecture, points of interconnection, or traffic volumes of Ameritech's Sprint's or GNAPs' networks.[33]

In ruling in Ameritech and Sprint's favor, the Ohio Commission held as follows:

> ***The Commission accepts the Panel's recommendations and shall issue an award in favor of Ameritech and Sprint. It is clearly evident that both this Commission's and the FCC's precedent state that ILECs may charge to transport and terminate intrastate and interstate exchange access traffic over their facilities.*** The words "intrastate and interstate exchange access traffic" were not included in the Panel's recommendation, but the idea that carriers may charge for such traffic is implicit. The Commission's decision is consistent with the FCC's Interconnection Rules, the FCC's Pennsylvania § 271 decision, the Ohio Local Service Guidelines, and the Commission's previous arbitration awards in Case Nos. 96-1011-TP-ARB and 00-1188-TP-ARB.[34]

The New York, Pennsylvania and Maryland Commissions likewise have recognized that a CLEC's decision to locate one POI in a LATA shifts costs to the ILEC.[35] The New York Commission acknowledged Verizon's concerns and the reasonableness of the VGRIP proposal.

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[33] *Id*. at 3-4.

[34] *Id*. at 5 (emphasis added).

[35] *See Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell Atlantic-New York*, Order Resolving Arbitration Issues, Case 99-C-1389, at 14 (N.Y.P.S.C. Jan. 28, 2000) ("*Sprint Arbitration Order")*; *In the Matter of the Arbitration of Sprint Communications Company, L.P. vs. Verizon Maryland Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*, ("*MD Sprint/Verizon Order*") Order No. 77320, Case No. 8887 (rel. October 24, 2001); *Petition of Sprint Communication Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements With Verizon Pennsylvania, Inc.*, ("*PA Sprint/Verizon Order*") Opinion and Order, A-310183F0002 (rel. October 14, 2001). Not only did the Maryland Commission conclude that Verizon bears additional costs under the CLEC's choice of POI, but it reached this conclusion even when the CLEC must establish a POI at a Verizon tandem for that tandem's serving area.

In examining this very issue during an arbitration between Verizon and AT&T, the Commission found that Verizon "raises a legitimate issue" regarding a CLEC's decision to interconnect with Verizon at only one point on Verizon's network, particularly when the CLEC uses the virtual FX arrangement for ISPs.[36] In an earlier arbitration between Verizon and Sprint, the Commission similarly found that

> Sprint's arguments for a single interconnection point in each LATA are unconvincing; it has not presented any valid technical reason why more efficient interconnections should not be established. Consequently, the Commission will permit Bell Atlantic-New York to interconnect at any technically feasible points it chooses to deliver traffic to Sprint, as long as Bell Atlantic-New York is willing to bear the costs of constructing and maintaining any such facilities.[37]

After examining the issue, the Maryland and Pennsylvania commissions each required Sprint to establish new facilities within a reasonable proximity of Verizon's switching centers. Notably, in Maryland, CLECs must establish one POI per Verizon tandem serving area when that carrier terminates calls to local end user customers in that serving area.[38]

Additionally, in a Florida arbitration between Sprint and BellSouth, the Florida Public Service Commission ("Florida PSC") held that Sprint may designate a single POI in a LATA.[39]

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[36] *See Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Order Resolving Arbitration Issues ("*AT&T Arbitration Order")*, 01-C-0095, 2001, N.Y. PUC LEXIS 495, at *47-48 (N.Y.P.S.C. July 31, 2001). The Commission, however, ultimately did not adopt VGRIP on grounds that the FCC and the Commission had already taken steps to address compensation for Internet traffic. *AT&T Arbitration Order* at *48.

[37] *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell Atlantic-New York, Order Resolving Arbitration Issues,* Case 99-C-1389, at 14 (N.Y.P.S.C. Jan. 28, 2000) (*"Sprint Arbitration Order").*

[38] *See MFS Intelenet of Maryland, Inc.*, 86 Md. PSC 467, 493, Case No. 8584, Phase II, Order No. 72348 (1995).

[39] *See Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.*, ("*FL Sprint/BellSouth Arbitration*") Docket No. 000828-TP, Order No. PSC-01-1095-FOF-TP (May 8, 2001).

But, when BellSouth is required to deliver "local" traffic outside of the BellSouth local calling area, Sprint must designate a ***virtual*** POI within a local calling area. Specifically, the Commission held:

> [F]or each exchange in which Sprint has a NPA/NXX 'homed' and from which NPA/NXX it has assigned numbers, Sprint must designate at least one VPOI [virtual POI] 'within' a BellSouth local calling area that encompasses that exchange.[40]

The South Carolina Public Service Commission ("South Carolina PSC") also concluded that holding the CLEC responsible to pay for facilities necessary to carry calls from distant local calling areas to a single POI was the only "fair and equitable result"[41]:

> Our review of the FCC's orders does not suggest that a CLEC is free to transfer the costs incurred by its interconnection choices onto the ILEC. In the *Local Competition Order* the FCC specifically stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[42]

The North Carolina Utilities Commission ("NCUC") reached a similar result in another arbitration proceeding involving AT&T.[43] In the *NC (AT&T/BellSouth) Arbitration Order*, the NCUC held that it was "equitable and in the public interest" to require AT&T to be responsible for transport beyond the local calling area.[44]

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[40] *Id*. at 63.

[41] *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, South Carolina PSC, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079, at 19 (Jan. 30, 2001).

[42] *Id.* at 27-28 (quoting *Local Competition Order* ¶ 199).

[43] *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73, P-646, Sub 7 (March 9, 2001) ("*NC (AT&T/BellSouth) Arbitration Order*") at 7-15.

[44] *NC (AT&T/BellSouth) Arbitration Order* at 15.

The North and South Carolina Commissions, like the Florida PSC in the *FL Sprint/BellSouth Order*, correctly recognized that forcing ILECs to bear the costs of the CLECs' network decisions, as GNAPs urges here, shifts costs to the ILEC and would be bad public policy.[45] The Commission should approve Verizon's VGRIP proposal because it gives GNAPs the choice of designating a single POI per LATA within Verizon's network without forcing Verizon to pay for that choice.[46]

2. Many of GNAPs' Contract Changes Were not Raised as "Open" Issues.

GNAPs has presented eleven issues for arbitration. In many instances, however, the contract language for which GNAPs seeks approval does not relate to Issues 1 and 2, or any other issues presented in its Petition. The Commission should not approve proposed contract language that has nothing to do with the issues presented for resolution in this arbitration.

A. Verizon Proposed Interconnection Agreement, Interconnection Attachment §§ 2.2.4, 2.2.5.

GNAPs' unexplained changes to § 2.2.5 eliminate engineering design requirements that ensure network reliability for the operation of interconnection trunk groups and Verizon's tandem switches and that avoid premature tandem exhaust. If a tandem exhausts because of

[45] *See MCI Telecommunications*, 271 F. 3d at 518 (citing *Local Competition Order* ¶ 209).

[46] GNAPs relies on a California Arbitrator's report to argue that Verizon should not be permitted to recover its costs for transporting its originating traffic to GNAPs' single POI. *See* GNAPs Petition ¶ 38. The California Public Utilities Commission, however, has held that "[c]arriers are entitled to be fairly compensated for the use of their facilities and related processing functions for the actual delivery of a call, irrespective of how a call is rated based on its NXX prefix." *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, D. 99-09-029 (rel. September 2, 1999), at Conclusion of Law 5. More important, the Commission also concluded that the "compensation exchanged between carriers related to the origination, switching, and routing of calls shall consider the actual rating points of the call, the volume of traffic, ***the location of the point of interconnection***, and the terms of the interconnection agreement in situations where different rating and routing points are used." *Id*. at Ordering ¶ 3 (emphasis added). Contrary to GNAPs' contention, the California commission has not prohibited an ILEC from recovering its costs to deliver its originating traffic to a distant CLEC POI.

excessive CLEC traffic, it will compromise Verizon's ability to manage its network, to the detriment of Verizon's retail and wholesale customers.

GNAPs' edits, which would allow it to circumvent Verizon's engineering practices, seems to confuse Verizon's traffic routing and engineering practices with GNAPs' ability to select a POI.

B. Alternative Interconnection Arrangements (Verizon Proposed Interconnection Agreement, Interconnection Attachment §§ 3 *et seq.*).

GNAPs' edits to this section indicate that it wants the unilateral ability to select how, when, and where to deploy a type of mid-span fiber meet arrangement between the companies, which is described as an end-point fiber meet. GNAPs' proposal would also dictate to Verizon the technical and operational details of the mid-span fiber meet arrangement and would require Verizon to construct new facilities. GNAPs' proposal is unreasonable and at odds with the nature of the fiber meet arrangement.

Nearly *all* aspects of each mid-span fiber meet arrangement are negotiated and can vary significantly from installation to installation. Some notable variables requiring joint consideration are: compensation issues, the terminating electronic equipment at each party's end (*e.g.*, their compatibility and upgrade policy); the mid-span fiber meet's transmission capacity; the parties' diversity requirements; and the physical environment, suitability and availability of the desired location for the mid-span fiber meet. Indeed, some of the additions GNAPs inserted into the Verizon agreement would bind the parties to deploy equipment and software that may not generally be utilized by Verizon and may become outdated over the course of this interconnection agreement.

GNAPs' proposal would graft a boilerplate agreement onto an arrangement that must, in practical terms, be reviewed on a case-by-case basis. Verizon will establish mid-span fiber meet arrangements with GNAPs, but because these are specialized arrangements, the parties will need

to define the details outside of the interconnection agreement before the mid-span fiber meet work begins. The most reasonable way of doing so is through a memorandum of understanding. After the details are defined through the memorandum of understanding, Verizon can start building the mid-span fiber meet.

Verizon's position is consistent with the FCC's holding that because each carrier derives benefit from the mid-span meet, "each party should bear a reasonable portion of the economic costs of the arrangement."[47] In addition, because the mid-span meet requires the ILEC to build new fiber optic facilities to the CLEC's network, the FCC has determined that the parties should mutually determine the distance of this build-out.[48]

GNAPs and Verizon have successfully executed memoranda of understanding in other jurisdictions to define the technical and operational details of particular mid-span fiber meet arrangements. GNAPs has offered no explanation as to why the parties should deviate from this successful practice. If the Commission should decide to rule on this issue, it should adopt Verizon's proposal and require the parties to reach mutual agreement on mid-span fiber meet details, through a memorandum of understanding, prior to deploying an end point fiber meet arrangement.

C. Ordering, Switching System Hierarchy, and Trunking Requirements (Verizon Proposed Interconnection Agreement, Interconnection Attachment §§ 5.2.2, 5.3).

GNAPs makes a number of inappropriate edits to §§ 5.2.2 and 5.3 that are inconsistent with how trunks and transport facilities are ordered and how calls are routed between switches. For example, in § 5.3, GNAPs struck language that is necessary for the proper routing of traffic between the parties. GNAPs' changes conflict with the Local Exchange Routing Guide

[47] *Local Competition Order* ¶ 553.

[48] *See id*.

("LERG"), which is used by all carriers—ILECs, CLECs, and IXCs—as a basis for routing terminating traffic. GNAPs' proposed changes, on their face, make no sense. To further exacerbate the confusion, GNAPs has provided no justification as to why it made these changes, how these edits effect Issues 1 and 2, or how the parties would route traffic between their respective switches.

ISSUE 3: Should Verizon's Local Calling Area Boundaries Be Imposed On GNAPs, Or May GNAPs Broadly Define Its Own Local Calling Areas?

(Verizon Proposed Interconnection Agreement, Glossary §§ 2.34, 2.47, 2.56, 2.77, 2.83, 2.91; Interconnection Attachment §§ 2, 6.2, 7.1, 7.3.4, 13.3).

GNAPs' Position: Verizon's Template Agreement should not constrain GNAPs from defining its own local calling areas, including defining its own local calling area on a LATA-wide basis.

Verizon's Alleged Position: GNAPs' local calling areas must mirror Verizon's existing legacy calling areas.

Verizon's Actual Position:

GNAPs' statement of this issue is misleading. The real issue here is not how GNAPs or Verizon define their local calling areas for their customers. It is, rather, how a calling area will be defined for purposes of reciprocal compensation between GNAPs and Verizon.

1. Although GNAPs May Define Its Own Retail Local Calling Areas, Verizon's Local Calling Areas Govern for Intercarrier Compensation Purposes.

Contrary to GNAPs' suggestions, using Verizon's local calling areas as the basis for assessing reciprocal compensation does ***not*** force GNAPs to adopt Verizon's local calling scopes for retail purposes. GNAPs will remain free to establish its own local calling areas for purposes of marketing its services to customers. Under Verizon's proposal, GNAPs could, for example, define the entire state as a local calling area; Verizon's proposal ensures only that its local calling area definition remains the standard for applying reciprocal compensation. Such a standard is

consistent with the decision made by this Commission that reciprocal compensation may apply only to calls originated and terminated within an ILEC's local calling area.[49]

What GNAPs cannot do, however, is circumvent the existing reciprocal compensation regime by re-defining a "local calling area." Because access rates are generally higher than reciprocal compensation rates, GNAPs seeks to avoid paying access charges by defining away toll calling. That is, if GNAPs uses the entire state as its local calling area for retail purposes, it contends that the entire state should be the local calling area for reciprocal compensation purposes. If allowed to create such a scheme, GNAPs could avoid payment of Verizon's tariffed charges and, thus, undermine the support that such revenues provide for basic local services prices.

2. Contract Changes Proposed By GNAPs But Not Discussed In GNAPs' Petition.

As with previous issues, GNAPs referenced disputed contract sections at the end of its discussion of Issue 3 that are unrelated to the question of which carrier's local calling scope governs for intercarrier compensation purposes. Specifically, GNAPs referred to but failed to explain disputed contract language in Glossary § 2.77 and Interconnection Attachment §§ 2, 7.1, and 13.3. The Commission should reject GNAPs' proposed contract language because (A) GNAPs raised no issue, provided no justification for its proposed language, and failed to explain Verizon's position in contravention of its duty as a Petitioner under § 252(b)(2) of the Act, and (B) Verizon's proposals are reasonable and consistent with the law.

[49] *Re Level 3 Communications, Inc.*, Docket No. 00-0332, 2000 WL 33424133 (Ill. Comm. Comm'n Aug. 30, 2000) at *7 ("The reciprocal compensation portion of the issue is straightforward. The FCC's regulations require reciprocal compensation only for the transport and termination of 'local telecommunications traffic,' which is defined as traffic 'that originates and terminates within a local service area established by the state commission.'").

Glossary Section 2.77 – Routing Point: GNAPs' edits to this section would remove the following sentence in the definition of a Routing Point: "The Routing Point must be located within the LATA in which the corresponding NPA NXX is located." The Routing Point must be a POI—a physical point where Verizon hands off traffic to GNAPs as discussed in connection with Issues 1 and 2. GNAPs must have at least one POI per LATA, and GNAPs may never compel Verizon to route traffic beyond the LATA. Although GNAPs does not explain why it deletes this sentence, GNAPs may be confusing the Routing Point with a GNAPs' switch or it may believe that this section impedes GNAPs' proposed "virtual FX" scenario discussed in connection with Issue 4. Whether the POI, and thus the Routing Point, is a switch or some other type of equipment, and whatever the resolution of Issue 4, Verizon's proposed definition of Routing Point appropriately makes clear that Verizon will not be routing calls to GNAPs beyond the LATA.

Interconnection Attachment Section 2: GNAP does not explain how its edits to this section relate to Issue 3. Verizon discusses various subparts of § 2 in which there is disputed contract language in connection with Issues 1, 2, 4, 5, and 7.

Interconnection Attachment Section 7.1: GNAP does not explain how its edits to this section relate to Issue 3. Verizon discusses § 7.1 in connection with Issues 1 and 2.

Interconnection Attachment Section 13.3: GNAP does not explain how its edits to this section addressing number resources, rate center areas, and routing points relate to Issue 3. GNAPs' edits would upend this provision, making it read, "Unless otherwise required by Commission order, each Party will comply with the Rate Center Areas it has established in its tariffs." This language should be rejected because it is contrary to FCC regulations. The FCC's local number portability guidelines require that companies limit porting of telephone numbers to the same rate center. It is essential that all companies operating in the top 100 Metropolitan

Statistical Areas ("MSAs") have identical rate center boundaries to ensure compliance with the FCC rules. Verizon's proposed language captures these obligations:

> Unless otherwise required by Commission order, the Rate Center Areas will be the same for each Party. During the term of this Agreement, GNAPs shall adopt the Rate Center Area and Rate Center Points that the Commission has approved for Verizon within the LATA and Tandem serving area. GNAPs shall assign whole NPA-NXX codes to each Rate Center Area unless otherwise ordered by the FCC, the Commission or another governmental entity of appropriate jurisdiction, or the LEC industry adopts alternative methods of utilizing NXXs.

For the reasons stated above, GNAPs' changes would eviscerate this regime and should be rejected.

ISSUE 4: Can GNAPs Assign To Its Customers NXX Codes That Are "Homed" In A Central Office Switch Outside Of The Local Calling Area In Which The Customer Resides?

(Verizon Proposed Interconnection Agreement, Glossary §§ 2.34, 2.47, 2.71, 2.72, 2.77, 2.83; Interconnection Attachment §§ 2.2.1.1, 2.2.1.2, 9.2.1 and 13.3).[50]

> **GNAPs' Position:** The primary function of NXX codes is for network traffic routing, not rating, purposes. Accordingly, NXX codes no longer need to be associated with any particular physical customer location and GNAPs should be allowed to assign NXX codes in a manner that fosters competitive choices for customers.
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> **Verizon's Alleged Position**: The Commission should not allow calls to end user customers with NXX codes linked to a certain rate center to be treated as local calls unless those end user customers actually maintain a physical presence in that rate center. In addition, GNAPs must pay some amount of costs that Verizon claims to incur in originating calls to customers who are located outside the rate center.
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> ***Verizon's Actual Position:***
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> With this issue, GNAPs states that it is seeking permission to assign NXX codes identified by the LERG as being associated with a particular local calling area to customers

[50] As with most of the issues in this proceeding, GNAPs makes numerous edits to Verizon's terms included that fall under Arbitration Issue No. 4, without any explanation or discussion. These edited terms and provisions edited by GNAPs thus should be rejected outright.

residing outside of that local calling area. None of the contract revisions GNAPs identifies, however, are targeted at accomplishing that goal. The contract already contains undisputed language to the effect that the Parties shall assign NXX codes in accordance with the Central Office Code Assignment Guidelines and applicable law.[51] Verizon objects to GNAPs' proposed edits for the reasons stated in Part E. below, but it respectfully submits that the Commission should not now decide issues related to NXX code assignments because the parties have already agreed that such assignments shall be made in accordance with applicable law.

To the extent GNAPs seeks in this arbitration a general policy statement from the Commission as to the legality of virtual NXX arbitrage strategies in Illinois, Verizon further submits that the Commission should deny GNAPs' request. The proper forum for such policy decisions is not a Section 251/252 interconnection agreement arbitration between two parties. Rather, such issues should be taken up in a general proceeding in which all affected parties may reasonably be expected to participate.

This interconnection agreement arbitration will bind only GNAPs and Verizon. Significant policy issues such as the Commission's position regarding virtual NXX arbitrage if decided here will likely surface again and again in future arbitrations. Thus, to the extent GNAPs seeks a Commission decision on virtual NXX arbitrage, Verizon respectfully submits that the Commission should defer examination of the issue until such time as it has heard the respective views of all affected parties in a general proceeding. If, however, the Commission elects to decide issues with regard to virtual NXX arbitrage strategies in this case, Verizon submits the rationale below to guide the Commission's decisions.

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[51] Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ or to request and be assigned any Central Office Codes ("NXX") pursuant to the Central Office Code Assignment Guidelines and any relevant FCC or Commission orders, as may be amended from time to time, or to establish, by Tariff or otherwise, Rate Center Areas and Routing Points corresponding to such NXX codes. *See* Interconnection Attachment, § 12.1.

1. GNAPs' Use Of NXX Codes Does Not Alter GNAPs' Intercarrier Compensation Obligations.

In a ten-digit local telephone number, the first three digits are the "numbering plan area" or "NPA," commonly called the "area code." The next three digits identify the specific telephone company Exchange Area within the geography covered by the NPA. These digits are referred to as the NXX. When a carrier issues a customer a number with a particular NXX, that carrier is telling all other carriers, for billing purposes, that the customer is located within the particular rate center to which the NXX is assigned in the industry standard documentation, the Local Exchange Routing Guide ("LERG").

Rate centers are specific geographic locations used by all carriers for call billing and call routing purposes. There is typically one rate center in each Exchange Area, which is the geographical area served by a single "exchange," or local switching center. Each of Verizon's Exchange Areas has a defined local calling area, which includes the entire Exchange Area and some surrounding territory. Local calling areas are defined in Verizon's tariffs, and determine whether a call is "rated" as local or toll. Each telephone number is associated with a particular rate center, based on the number's combination of the area code and the NXX code.

A customer's telephone number thus facilitates two separate but related functions: proper call routing and proper call rating. Each NXX within an NPA is assigned to ***both a switch and a rate center***. As a result, telephone numbers provide the network with specific information (*i.e.*, the called party's end office switch) necessary to route calls correctly to their intended destinations. Telephone numbers also identify the exchanges of both the originating caller and the called party necessary for the proper rating of calls. It is this latter function of assigned NXX codes—the proper rating of calls—that is at the heart of the virtual NXX issue.

Verizon opposes virtual NXX assignments and payment of reciprocal compensation for these non-local calls, but not because it is attempting to "thwart" the development of new

telephone services for Illinois consumers. Rather than serving the public, GNAPs has two more self-serving goals in mind: (A) to require Verizon, contrary to law, to pay reciprocal compensation to GNAPs for calls that do not originate and terminate in the same Verizon local calling area and thereby constitute exchange access service, and (B) to deprive Verizon of access charges that it is otherwise entitled to receive for such toll calls.

What GNAPs wants to do here is to assign NXX codes to its customers that do not correspond to the rate centers in which those customers' premises are physically located. For example, GNAPs would like to give a customer a telephone number with an NPA-NXX code that is assigned to the Macomb rate center, even though the customer is not located in Macomb, but rather Bloomington. As a result, when a Verizon customer in Macomb calls the GNAPs customer physically located in Bloomington, it looks like a local Macomb call to both Verizon and its customer in Macomb, even though the call is being placed between different local calling areas. GNAPs' virtual NXX proposal would obliterate the longstanding local/toll distinction that guides telephone service pricing policy. ILECs' tariffs and billing systems use the NXX codes of the calling and called parties to ascertain the originating and terminating exchanges involved in a call, and the call is rated accordingly. A customer's basic exchange rate typically includes the ability to make an unlimited number of calls within a designated geographic area at modest or no additional charge. Calls outside the local calling area (as defined in Verizon's tariffs and local interconnection agreements) are subject to an additional toll charge. Toll service is generally priced higher, on a usage-sensitive basis, than local calling. As regulators across the country, including this Commission, understand, toll revenues have historically been used to

hold down the price of basic local service.[52] However, if NXX codes can be assigned to customers outside their home rate center, then the ILEC cannot discern whether the call is local or toll, and cannot properly rate it. Potentially, all calls will look like local calls—*even if they are classified as toll for billing purposes in the ILECs' tariffs.* This means that ILECs will lose the toll revenues that are a principal source of contribution to local rates.

Verizon itself has no way of tracking virtual NXX calls on a call-by-call basis. Likewise, Verizon has no ability to "look behind" GNAPs' system for assigning NXX codes and no ability to determine where a particular call has actually terminated physically. If Verizon cannot make this determination, then there is no way of verifying whether a particular call for which GNAPs is seeking reciprocal compensation is *actually* a local call made between callers in the same local calling area. Indeed, GNAPs' own description of its proposed virtual NXX service—which it intends to "span regions"—practically guarantees that most if not all of such calls will *not* be local.[53]

GNAPs asserts that reciprocal compensation rather than access charges applies to the hypothetical call discussed earlier thereby making Verizon's inability to "look behind" its system irrelevant. While GNAPs would clearly benefit financially from this sort of arrangement, Verizon is harmed not just by having to make improper reciprocal compensation payments, but by being denied access charges that properly apply to toll traffic. Under GNAPs proposal Verizon would be forced to carry calls across rate centers without compensation from either GNAPs or the party placing the call, even if that party is a Verizon customer. Verizon is

[52] In lieu of a toll charge to the customer initiating the call, ILECs can be reimbursed for their handling of the long-distance call through arrangements such as toll-free 1-800/877/888 or through foreign exchange (FX) service. In no instance, however, does Verizon offer to transport traffic outside of the local calling area without additional compensation for the long-distance handling. Doing so would undermine the infrastructure that has been established to help maintain affordable local service.

[53] *See* GNAPs' Petition at 20 ¶ 48.

concerned that the widespread use of virtual NXX codes may not be entirely consistent with the FCC's rules regarding location, number portability, and number assignment. In fact, Verizon is convinced that GNAPs' virtual NXX proposal will result in GNAPs' unilateral cancellation of Verizon's state toll tariffs.

Stated another way, what GNAPs essentially seeks to achieve is a massive rate center consolidation, with potentially *the entire nation* as a *local* calling area. Verizon has no problem with the NECs (or the ILECs) defining their own calling areas as they see fit. However, as noted above, GNAPs' proposal would force Verizon to redefine its local calling areas. The local/toll calling concept that is linked to Verizon's rate centers, and that is embodied in its tariffs and interconnection agreements, will be rendered meaningless.

Verizon's opposition to this scheme is consistent with Section 251(g) of the Act, and the FCC's *Local Competition Order*. The *Local Competition Order* implements the Act. In it, the FCC asserted that "transport and termination of local traffic are different services than access service for long distance communications."[54] GNAPs' proposal selfishly seeks to eliminate the existing access regime for interexchange calls and to manipulate local interconnection into a windfall for GNAPs.

Furthermore, the reciprocal compensation provisions in Verizon's proposed interconnection agreement are intended to track the FCC's regulations implementing the reciprocal compensation requirements in § 251(b)(5).[55] Those regulations incontrovertibly defined local traffic based on the physical originating and ending points of a call. For example, in the FCC's *Local Competition Order,* the FCC made clear that the *physical* originating and

[54] *See Local Competition Order* at ¶ 1033.

[55] Even with its improper edits to Verizon's proposed definition of "Reciprocal Compensation," GNAPs concedes this to be the case.

terminating points of the call determine whether reciprocal compensation charges apply, stating, "Traffic originating and terminating outside of the applicable local area would be subject to interstate and intrastate access charges."[56]

2. State Commissions that Have Considered the Virtual NXX Issue Have Overwhelmingly Sided with ILECs.

Although this Commission has yet to address Virtual NXX arbitrage as it applies directly between CLECs and Verizon, numerous state commissions including this one have examined the issue and have sided with ILECs. For example, in the recently concluded arbitration proceeding between Verizon and GNAPs in California, the California ALJ agreed with Verizon on Issue 4.[57] In reaching that decision based on the same evidence and proposals that Verizon will present here, the California ALJ concluded:

> GNAPs may offer disparate rating and routing points to its own customers, but it must compensate Pacific and Verizon at TELRIC rates for use of the ILEC's transport and tandem switching networks to carry that FX-type traffic.

Confronted with the very same evidence in this proceeding, this Commission should reach this same result. Indeed, this Commission has twice before determined that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area.[58] GNAPs gives the Commission no reason to ignore these previous decisions.

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[56] *See Local Competition Order* at ¶ 1035.

[57] California Draft Arbitration Report at 52.

[58] *TDS Metrocom, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech-Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Decision, Docket No. 01-0338 at 48 (Ill. Comm. Comm'n Aug. 8, 2001); *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Arbitration Decision, Docket No. 00-0332 (Ill. Comm. Comm'n Aug. 30, 2001) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.").

The Ohio Commission likewise addressed this very same issue (along with Issue 3) in the *Ohio Arbitration Order*. Noting that GNAPs was free to establish its own local calling areas as it saw fit, the Ohio Commission adopted Ameritech and Sprint's position (shared by Verizon here) that a virtual NXX service should not be permitted to "undo" another carrier's local calling areas in the way GNAPs proposes. It stated:

> Consistent with the Commission's award in Case No. 01-724-TP-ARB (01-724), the Panel found that to the extent that a non-ISP bound call to a customer utilizing virtual NXX service provided by either Ameritech, Sprint, or GNAPs originates and terminates within Ameritech's or Sprint's local calling territory as revised to reflect EAS, the call is considered local and reciprocal compensation is due. ***To the extent that the call to a customer utilizing virtual NXX service originates or terminates outside of Ameritech's or Sprint's local calling area, as revised to reflect EAS, the Panel stated that the call is considered toll or interexchange. Compensation is based on the originating or terminating party's access charges.***
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> *** * ***
>
> ***The Commission agrees with the Panel's recommendation for issue 4.*** We find that the Panel's recommendation is consistent with the Commission's Local Service Guidelines and the Commission's award in 01-724. With issue 4, there appears to be some confusion on the part of GNAPs with regard to the interpretation of the language in Local Service Guideline IV.C. Consistent with the Commission's award in 01-724 and the first sentence in Local Service Guideline IV.C., ***we believe that Ameritech's and Sprint's local calling areas, as revised to reflect EAS, shall be used to determine whether a call is local for the purpose of local traffic termination compensation. GNAPs has asserted no argument or facts that convince us to render a different conclusion.***[59]

The overwhelming majority of other state commissions to consider this issue likewise have held that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area. The Florida Commission, for

[59] *Ohio Arbitration Order* at 8, 11 (emphasis added).

example, echoed these rulings when recently confirming that virtual NXX or "VFX" traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates.[60] While the Florida Commission ruled that CLECs may assign telephone numbers to end users physically outside the rate center to which a telephone number is homed,[61] it agreed with its Staff's conclusion that compensation for traffic depends on the end points of the call—that is, where it physically originates and terminates—not on "the NPA/NXXs assigned to the calling and called parties."[62] The Staff recommended, and the Florida Commission agreed, that "calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned ***are not local calls for purposes of reciprocal compensation***."[63]

Other state commissions have reached exactly this conclusion. They include California,[64] Connecticut,[65] Texas,[66] South Carolina,[67] Tennessee,[68] Georgia,[69] Maine,[70] and Missouri.[71]

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[60] *See* Staff Memorandum, Investigation into Appropriate Methods to Compensate Carriers for Exchange Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996, Florida PUC Docket No. 000075-TP ("Reciprocal Compensation Recommendation"), Issue 15 at 68, 71, 96 (Nov. 21, 2001), approved at Florida PUC Agenda Conference (Dec. 5, 2001).

[61] *Id.* at 90-96.

[62] *Id*. at 88-89; Florida PUC Agenda Conference Approval (Dec. 5, 2001), Issue 15.

[63] Reciprocal Compensation Recommendation at 94.

[64] *See Re Level 3 Communications, LLC Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, for Rates, Terms and Conditions with Pacific Bell Telephone Company*, Cal. PUC Docket No. D.00-10-032 at 5.

[65] *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Draft Decision, Docket No. 01-01-29, at unnumbered page 21 (Conn. D.P.U.C. March 19, 2001) ("The purpose of mutual compensation is to compensate the carrier for the cost of terminating a local call *and since these calls are not local*, they will not be eligible for mutual compensation.") (emphasis added) ("DPUC Investigation").

[66] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Revised Arbitration Award, Docket No. 21982 at 18 (Tex. P.U.C. Aug. 31, 2000) (finding FX-type traffic "not eligible for reciprocal compensation" to the extent it does not terminate within a mandatory local calling scope).

[67] *In re Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Order on Arbitration, Docket

(continued…)

Furthermore, several of these other state commissions have explicitly determined that access charges, rather than reciprocal compensation, should apply to virtual NXX traffic. The Tennessee Commission, for example, stated that "calls to an NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic for purposes of intercarrier compensation and, therefore, are subject to access charges."[72] The Georgia Commission concurred, noting, "Application of an end-to-end analysis to Virtual FX calls focuses on this traffic traveling between local calling areas, and leads to a conclusion that reciprocal compensation is not due for these calls."[73] The South Carolina Commission perhaps stated it best: "[T]he Commission concludes that originating access charges are the appropriate compensation rate. Without the "virtual NXX" designation, the traffic would be toll traffic."[74]

No. 2000-516-C, at 7 (S.C. P.S.C. Jan. 16, 2001) ("Applying the FCC's rules to the factual situation in the record before this Commission regarding this issue of virtual NXX, this Commission concludes that reciprocal compensation is not due to calls placed to virtual NXX numbers as the calls do not terminate within the same local calling area in which the call originated.") ("Adelphia Arbitration Order").

[68] *In re Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Tennessee PSC Docket No. 99-00948, at 42-44 (June 25, 2001) "BellSouth/Intermedia Arbitration Order").

[69] *Generic Proceeding of Point of Interconnection and Virtual FX Issues*, Final Order, Docket No. 13542-U, at 10-12 (GA P.S.C. July 23, 2001) ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.") ("Georgia Generic Proceeding").

[70] Public Utility Commission Investigation into Use of Central Offices Codes (NXXs) by New England Fiber Communications, LLC d/b/a/ Brooks Fiber Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, and Order Disapproving Proposed Service (June 30, 2000) (finding VFX an interexchange service, not a local exchange service).

[71] *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Order, Case No. TO-2001-455, at page 31 (Mo. P.S.C. June 7, 2001) (finding VFX traffic "not classified as a local call").

[72] BellSouth/Intermedia Arbitration Order at 44.

[73] Georgia Generic Proceeding at 11.

[74] Adelphia Arbitration Order at 13.

3. The Commission Should Prohibit GNAPs from Virtually Assigning NXX Codes or it Should Require GNAPs to Pay Access Charges Properly Due Verizon for Toll Calls.

For the foregoing reasons, the Commission should prohibit GNAPs from assigning NXX codes in a virtual manner. Such assignments will eviscerate the local/toll distinction contrary to law and will create customer confusion while severely depleting scarce number resources. As an alternative, the Commission could permit virtual NXX assignment but only under the condition that GNAPs pay to Verizon the access charges that would otherwise apply to the virtual NXX calls but for the virtual NXX assignment. Finally, with regard to the specific contract revisions proposed by GNAPs, and for the reasons stated above, the Commission should find in accordance with Verizon's comments below.

4. Comments on Specific GNAPs Proposed Contract Section Edits.

Below, Verizon describes particular GNAPs' edits purportedly related to this Issue, and explains in more detail why the Commission should reject these unexplained contract changes.

Verizon's Glossary Section 2.71 – Rate Center Area: GNAPs' edits would remove from this Section the following sentence: "The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA/NXX designation associated with the Specific Rate Center Area." GNAPs' edit appears to be based upon the incorrect assumption that that the term "LEC" in the parties' interconnection agreement means "Verizon" only. That is not correct. The term LEC (which is an undisputed term contained in Verizon's Glossary § 2.49) includes all local exchange carriers, not just incumbents, consistent with the Act's definition. Indeed, Glossary § 2.49 specifically provides that the term "[s]hall have the meaning set forth in the Act." As a result, the geographic area associated with a Rate Center Area or Exchange Area is not defined exclusively by Verizon. For purposes of the parties' interconnection agreement, it is necessary

to use the word "exclusive" in order to clarify geographic areas identified by Verizon and Verizon alone (as opposed to geographic areas that may have been defined by other LECs as well). GNAPs' edit accordingly should be rejected.

Verizon's Glossary Section 2.72 – Rate Center Point: GNAPs' edits to this Section would replace the terms "Telephone Exchange Service" and "Toll Traffic," both defined elsewhere in the agreement, with the broader term "Telecommunications Service." There simply is no need for this change, because the calls being measured for purposes of this definition are Telephone Exchange Service and Toll Traffic. "Telecommunications Service" is also defined elsewhere in the agreement as well as in the Act itself. GNAPs' edits, however, would serve no purpose and would confuse an otherwise clear definition. They should be rejected.

Verizon's Glossary Sections 2.47 and 2.83 – IXC and Switched Access Exchange: GNAPs' proposed change to the definition of "IXC" is erroneous. Contrary to GNAPs' inserted language, there is nothing that requires an IXC to impose a "toll charge" for its services. For example, AT&T would still be an IXC even if it did not impose a toll charge on telecommunications services. It is commonly understood that as "Long-haul long distance carriers, IXCs include all facilities based inter-LATA carriers…IXCs also provide intraLATA toll service and operate as CLECs…in many states."[75] Verizon's definition thus is entirely appropriate and should be adopted.

GNAPs would significantly revise the definition of "Switched Exchange Access" to give this term "the meaning ascribed to it under 47 U.S.C. § 153(16)." Although GNAPs finally chooses this section to acknowledge the Act's definitional distinction between local and toll, Verizon's definition is more complete and should be adopted. Verizon defines "Switched

[75] *See* Newton's Telecom Dictionary 380-381 (17th ed. 2001).

Exchange Access" as, "The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access, and 900 access." GNAPs' less precise definition leaves the provision unworkable. An interconnection agreement is meaningless if it cannot be implemented by operational personnel. Directing non-lawyers to a legal definition ignores this practical concern. Accordingly, GNAPs' edits should be rejected.

Verizon's Interconnection Attachment Sections 2.2.1.1 and 2.2.1.2: GNAPs' changes to these Sections misstate the law. As written by Verizon, § 2.2.1.1 establishes that Interconnection Trunks are to be used for Reciprocal Compensation Traffic, translated LEC IntraLATA toll free service access code traffic, IntraLATA Toll Traffic (between Verizon and GNAPs' respective customers), Tandem Transit Traffic, and Measured Internet Traffic. GNAPs' language would allow other types of traffic to be carried on Interconnection Trunks *based on whether the carrier of the traffic imposes a charge for the traffic*. Likewise, in § 2.2.1.2, GNAPs' changes would limit Exchange Access to that traffic for which the carrier charges from "time to time."

The imposition of charges is not the defining criterion for Exchange Access traffic. GNAPs' erroneous edits, therefore, should be rejected.

Verizon's Interconnection Attachment Section 9.2.1: GNAPs' edits to this Section are equally inappropriate. GNAPs' revisions would have it read, "If GNAPs chooses to subtend a Verizon access Tandem, GNAPs shall designate the NPA/NXX to be served via that Tandem." Because IXCs typically route traffic using the rate center assigned to the NPA/NXX code, GNAPs' proposed language would result in misrouted and uncompleted terminating long-distance (access) calls. Verizon's proposed language avoids this problem, stating, "If GNAPs

chooses to subtend a Verizon access Tandem, GNAPs' NPA/NXX must be assigned by GNAPs to subtend the same Verizon access Tandem that a Verizon NPA/NXX serving the same Rate Center Area subtends as identified by LERG."

Subtending the appropriate tandems is also crucial in order to avoid tandem congestion. Verizon's tandems are deployed in accordance with traffic forecasts to manage existing and future traffic volumes to and from specific geographic areas. If GNAPs is allowed to serve areas not originally factored into those forecasts, tandem congestion and even blockages could occur while other tandems remain underutilized. GNAPs must take into account the design and capacity of Verizon's network which contemplates tandem serving areas.

The Commission should reject GNAPs' edits in favor of Verizon's more practical and workable language.

ISSUE 5: Is It Reasonable For The Parties To Include Language In The Agreement That Expressly Requires The Parties To Renegotiate Reciprocal Compensation Obligations If Current Law Is Overturned Or Otherwise Revised?

(Verizon Proposed Interconnection Agreement, General Terms and Conditions §§ 4.5, 4.6; 4.7, Glossary §§ 2.42, 2.56, 2.74, 2.75, 2.91, 2.93, 2.94; Interconnection Attachment §§ 6.1.1, 6.2, 6.3, 7.2, 7.3.2.1, 7.3.3, 7.4; Additional Services Attachment § 5.1).[76]

> **GNAPs' Position:** Yes. There is continuing uncertainty surrounding the question of whether ISP-bound calls are local traffic, subject to reciprocal compensation under 47 U.S.C. § 251 (b)(5). Because the FCC's most recent ruling on this issue is currently being challenged before federal appellate courts, there is good reason to include specific language in the Agreement obligating both Parties to renegotiate these issues if current law changes.
>
> **Verizon's Alleged Position:** No. The parties' should agree to utilize reciprocal compensation for the exchange of "local" traffic, "bill and keep" for "ISP-bound traffic" while compensation for the exchange of "toll" traffic shall be based on retail access rates.

[76] As with most of the issues in this proceeding, GNAPs makes numerous edits to Verizon's terms included in the wake of the *ISP Remand Order*, without any explanation or discussion. The terms and provisions edited by GNAPs should be rejected for the reasons stated herein.

Verizon's Actual Position:

As the Commission is well aware, the FCC's *ISP Remand Order* is the controlling law of the land. As with all legal authority governing the parties' interconnection agreement, the *ISP Remand Order* may be subject to future changes. On May 3, 2002, the United States Court of Appeals for the District of Columbia Circuit found that the FCC's statutory rationale for the *Order on Remand* was flawed, and it remanded the matter to the FCC to develop a different rationale.[77] In the meantime, however, the *Order on Remand* remains in effect and Verizon is entitled to preserve its rights with regard to the Order.[78] Both Verizon and GNAPs have anticipated these possible changes and have proposed identical "change of law" language.[79] This standard language will squarely address any future reversal of or modification to the *ISP Remand Order*, as well as any other legal authority.

GNAPs, however, inexplicably wants to carve out the *ISP Remand Order* from the parties' identical "change of law" language for special treatment. There is no need to for the specific carve-out that GNAPs proposes. On the other hand, there is a need to address GNAPs' numerous edits to the intercarrier compensation and related terms Verizon has proposed in the wake of the *ISP Remand Order*. GNAPs' unexplained, erroneous edits should be rejected.

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[77] *WorldCom, Inc. v. F.C.C.*, 2002 WL 832541 (C.A.D.C., May 3, 2002).

[78] Other state commissions have recognized that interconnection agreements with appropriate change of law provisions should incorporate the terms of the *Order on Remand*. *See Petition of Verizon Pennsylvania Inc. for Resolution of Dispute with WorldCom, Inc. Pursuant to the Abbreviated Dispute Process*, Docket No. A-310752F700, Public Meeting, (Pa. P.U.C. April 11, 2002); *Complaint of Global NAPs, Inc. Against Bell Atlantic-Rhode Island Regarding Reciprocal Compensation*, Docket No. 2967, Report and Order, at 5 (R.I. PUC, Jan. 29, 2002).

[79] *See* Verizon's proposed interconnection agreement at Agreement §§ 4.5, 4.6; GNAPs' proposed interconnection agreement at Agreement §§ 4.5, 4.6.

1. The *ISP Remand Order* Should not be Carved out from all Other Authorities Potentially Subject to a Future Change in Law.

As an initial matter, GNAPs makes no effort to explain why Verizon's standard "change of law" language (that GNAPs itself has proposed) is inadequate for purposes of revising the parties' interconnection agreement in the event the *ISP Remand Order* is someday reversed or otherwise modified. Sections 4.5 and 4.6 of the interconnection agreement explicitly obligate the parties to "revisit" the issue of compensation for Internet-bound traffic under those circumstances and to adopt new language forthwith:

> 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, ***the Parties shall promptly negotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.***
>
> 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, ***or any change in Applicable Law***, materially affects any material provision of this Agreement, the rights or obligations of a party hereunder, or the ability of a Party to perform any material provision of this Agreement, ***the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.***[80]

[80] *See* GNAPs' proposed interconnection agreement at §§ 4.5, 4.6 (emphasis added).

GNAPs has provided no legitimate reason to carve out the *ISP Remand Order* from all other applicable law and to repeat what §§ 4.5 and 4.6 already say. Indeed, injecting superfluous language is undesirable in drafting any contract.

Distinguishing the *ISP Remand Order* from other controlling authority potentially subject to reversal or modification would set a confusing precedent that could lead to problems reconciling two separate provisions. For example, CLECs not familiar with the negotiations in this proceeding might contend that if §§ 4.5 and 4.6 were intended to cover all changes in law, then it would not have been necessary to single out the *ISP Remand Order* in the first place. Verizon would be forced to litigate the question of the breadth of §§ 4.5 and 4.6 every time a CLEC disagreed with a new FCC, Commission, or judicial ruling. Verizon should be permitted to rely upon its right to import changes of law without having to initiate repeated proceedings to reaffirm this right.

2. The Commission Should Adopt Verizon's Proposed Language Pertaining to Compensation for Internet-Bound Traffic.

Verizon's proposed terms pertaining to compensation for Internet-bound traffic are completely consistent with the *ISP Remand Order*. As this Commission knows, it has no authority to depart from the FCC's intercarrier compensation rate regime.[81] GNAPs' unexplained edits to Verizon's proposed terms either ignore the *ISP Remand Order*, leave explanations within the interconnection agreement vague, or otherwise make no sense at all. A full understanding of Verizon's position in this area is necessary in order to put Verizon's proposed terms into context.

As this Commission knows, the *ISP Remand Order* again confirmed that Internet-bound traffic is not subject to the reciprocal compensation requirements of § 251(b)(5). The FCC

[81] *See ISP Remand Order* at ¶¶ 39, 52.

explained, it has "long held" that enhanced service provider traffic—which includes traffic bound for Internet Service Providers ("ISPs")—is interstate access traffic.[82] The FCC further held that "the service provided by LECs to deliver traffic to an ISP constitutes, at a minimum, 'information access' under section 251(g)."[83] Consequently, these services are excluded from the scope of the reciprocal compensation requirements of § 251(b)(5).[84]

The *ISP Remand Order* also sets forth the presumption that traffic from one carrier to another that exceeds a 3:1 ratio is Internet-bound traffic.[85] The FCC's interim rate regime will apply to this traffic. The determination of whether the 3:1 ratio has been exceeded rests upon a consideration of all traffic (except Toll Traffic) exchanged between the Parties pursuant to the agreement.[86] It is also important to note that GNAPs is not entitled to intercarrier compensation from Verizon for Internet traffic in Illinois under the mechanism set forth in the *ISP Remand Order*. An essential element of the *ISP Remand Order's* prescribed intercarrier rate regime is the volume cap established at ¶ 78 of the *ISP Remand Order*. There, the FCC mandated that future intercarrier compensation is limited by the amount of Internet-bound traffic exchanged during the first quarter of 2001.[87] Because Verizon and GNAPs did not exchange any Internet traffic in Illinois—or any traffic for that matter—at all during that period, the parties are on a "bill and keep" basis for all Internet-bound traffic for all periods subject to this interconnection

[82] *Id.* at ¶ 28.

[83] *Id*. at ¶ 30. *See also, id*. at ¶ 44.

[84] *Id*. at ¶ 34 ("We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5)").

[85] *Id.*

[86] *Id.* at ¶ 79.

[87] *See ISP Remand Order* at ¶ 78.

agreement.[88] Nevertheless, it is important to include the intercarrier compensation and related definitions in the interconnection agreement in order to clarify what constitutes reciprocal compensation and what does not under the FCC's regime.

Verizon's contract language correctly embodies these principles. Specifically, Verizon has addressed the new regime in its proposed definitions of "Reciprocal Compensation" (Glossary § 2.74) and "Reciprocal Compensation Traffic" (Glossary § 2.75), as well as in §§ 6 and 7 of the Interconnection Attachment, clarifying what traffic types qualify for reciprocal compensation and which do not.

Verizon's closely related definitions of both "Reciprocal Compensation" and "Reciprocal Compensation Traffic" embody the *ISP Remand Order*'s intercarrier compensation obligations as they relate to Internet-bound traffic. As the Commission is aware, that Order not only prescribed a mandatory intercarrier compensation rate regime with regard to the treatment of Internet-bound traffic but also, consistent with its statutory interpretation, amended the definition of traffic that is subject to reciprocal compensation under § 251(b)(5) of the Act.[89] Indeed, the FCC no longer utilizes the term "local" to identify traffic that is subject to reciprocal compensation. Rather, the *ISP Remand Order* makes clear that, among other things, reciprocal compensation never applies to "information access" traffic (such as Internet-bound traffic) that falls under Section 251(g) of the Act.[90] In short, in order to be eligible for reciprocal compensation, traffic now must meet two requirements. It must be:

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[88] *See ISP Remand Order* at ¶ 81 ("Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to an interconnection agreement prior to the adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously has not served)").

[89] *See* 47 CFR § 51.701(e).

[90] *See ISP Remand Order* at ¶¶ 32 and 34.

(1) "Telecommunications traffic," which is defined as:

> Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see, FCC 01-131, ¶¶34, 36, 39, 42-43) …. *See* 47 CFR § 51.701(b)(1).

and

(2) the traffic must originates on the network of one carrier and terminate on the network of the other carrier.[91]

In view of this plain language, Verizon has proposed a definition of "Reciprocal Compensation Traffic" that is consistent with the FCC's ruling and captures these two key requirements for eligibility for reciprocal compensation:

> A call completed between two Telephone Exchange Service Customers of the Parties located in the same LATA, originated on one Party's network and terminated on the other Party's network where such call was not carried by a third party carrier during the course of the call or carried by a Party as either a presubscribed call (1+) or a casual dialed (10XXX or 1010XXXX) call originated by a Telephone Exchange Customer of another carrier. Reciprocal Compensation Traffic does not include: (1) any Internet Traffic; (2) Toll Traffic; (3) special access, private line, Frame Relay, ATM , or any other traffic that is not switched by the terminating Party; or, (4) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment).

Verizon's definitions of "Reciprocal Compensation" and "Reciprocal Compensation Traffic" are necessary to clarify what traffic is subject to reciprocal compensation and what traffic is not. Verizon's definition of "Measured Internet Traffic" in Glossary § 2.56 likewise identifies traffic that is subject to the interim compensation regime adopted by the FCC. This definition is reflected in Verizon's Interconnection Attachment, §§ 6 and 7, as well as in the definitions of "FCC Internet Order" (Glossary § 2.42) (left undisturbed by GNAPs); "Internet

[91] *See* 47 CFR § 51.701(e).

Traffic"(Glossary § 2.48); "Toll Traffic" (Glossary § 2.91); "Traffic Factor 1" (formerly "Percent Interstate Usage") (Glossary § 2.93), and "Traffic Factor 2" (formerly "Percent Local Usage") (Glossary § 2.94).[92] GNAPs has not offered any reason why the FCC's regime should not be so reflected.

GNAPs' edits create the following problems in specific contract sections:

Verizon's Glossary Section 2.74 – Reciprocal Compensation: GNAPs' proposed definition of "Reciprocal Compensation," which refers simply to § 251(b)(5) of the Act, is too limited in the wake of the *ISP Remand Order*. At a minimum, it is necessary to specify that reciprocal compensation provides for the recovery of costs incurred for the transport and termination of "Reciprocal Compensation Traffic," as defined. Verizon's proposed terms accomplish this end and should be adopted.

Verizon's Glossary Section 2.75 – Reciprocal Compensation Traffic: GNAPs proposes adding a parenthetical to the definition of Reciprocal Compensation that does not make any sense. That parenthetical speaks to the local calling area of either party determining whether a call is local or toll. The definition makes this clear by stating that it applies to calls exchanged between the parties within the same LATA. The section further specifies the types of traffic not included in Reciprocal Compensation Traffic. To the extent GNAPs does not agree with the manner in which the agreement defines toll traffic, that issue should be addressed in Toll Traffic definition.

[92] The Commission also should adopt the following Verizon-proposed terms, which GNAPs has inexplicably and inappropriately attempted to alter: Glossary, §§ 2.45 ("IP"), and 2.91 ("Toll Traffic"); Additional Services Attachment, § 5.1 ("Voice Information Services Traffic"); and Interconnection Attachment, §§ 2.2.1.1, 3.3, 6.2, and 7.3.2.1. These provisions reflect changes to terminology that would be necessitated by the adoption of Verizon's proposed definitions and terms addressed above and/or changes necessitated by conforming the terms of this agreement to the intercarrier compensation regime established by the FCC.

In addition, GNAPs adds the phrase "unless Applicable Law determines that any of this traffic is local in nature and subject to Reciprocal Compensation" in what appears to be an attempt to again circumvent the "change in law" provisions set forth in §§ 4.5 and 4.6 of the General Terms and Conditions. This language is inappropriate for all of the reasons identified above.

Verizon's Glossary Section 2.56 – Measured Internet Traffic: GNAPs' proposed edits to this definition present the same problems as its edits to the definition of "Reciprocal Compensation Traffic." For example, GNAPs deletes references to and descriptions of the Verizon local calling areas that set the boundaries for determining the nature of traffic, and deletes references to calls originated on a 1+ presubscription basis and casual-dialed calls. Verizon accordingly incorporates its prior arguments by reference.

Verizon's Glossary Section 2.42 – Internet Traffic: GNAPs' objective in excluding CMRS traffic from the "Internet Traffic" definition is unclear. Equally unclear is what GNAPs intends by adding the phrase "between the parties" in defining what constitutes "Internet Traffic." These changes make no sense. Without further satisfactory explanation, and an opportunity for Verizon to respond, the Commission should adopt Verizon's definition *in toto.*

Verizon's Glossary Section 2.91 – Toll Traffic: GNAPs' definition, as proposed, is too limited. The term "Toll Traffic" is used in the interconnection agreement with reference to traffic that is exchanged between the parties. Thus, GNAPs' pointing to the definition of "telephone toll service" as contained in 47 U.S.C. § 153(48) is insufficient. In addition, the imposition of a toll charge by the party providing the service does not, in itself, define a toll call, or determine whether a toll call is intra- or inter-LATA, as GNAPs states. Moreover, GNAPs' focus on the toll charge in its definition of "Toll Traffic" creates the same problems of a

mismatch between reciprocal compensation and access traffic that was discussed above in the context of "Reciprocal Compensation Traffic." GNAPs' definition therefore should be rejected.

Verizon's Glossary Sections 2.93 and 2.94 – Traffic Factors 1 and 2: GNAPs appears to use Verizon's proposed term "Traffic Factor 1" to quarrel with the *ISP Remand Order*. For example, each of GNAPs' changes to these definitions appears to remove any concession that Measured Internet Traffic is not interstate in nature (*e.g.*, deleting the exclusion of Measured Internet Traffic from a calculation based on "interstate traffic" in the definition of Traffic Factor 1). Obviously, the Glossary of the parties' interconnection agreement is not the place for GNAPs to continue its argument with the FCC on the nature of Internet Traffic. GNAPs' changes to "Traffic Factor 2," moreover, only muddy the waters. Changing the term "intrastate" traffic to "other" traffic makes the definition vague and unworkable.

With respect to the Interconnection Attachment, Verizon's proposed §§ 6 and 7 implement the requirements of the *ISP Remand Order*; namely, to define the boundary between (a) traffic that is subject to reciprocal compensation and (b) other traffic, such as Internet-bound traffic, that is not. GNAPs has modified certain components of §§ 6 and 7 of the Interconnection Attachment without explanation in ways that are particularly troubling:

Verizon's Interconnection Attachment Section 6: In this § 6.1.1, GNAPs continues its assault on the *ISP Remand Order* by deleting some, but not all, references to Measured Internet Traffic and the *ISP Remand Order* in the billing description of the types of traffic and application of the appropriate traffic rate. GNAPs also conditions the rate application only to those minutes where calling party number ("CPN") is passed, without providing any terms for what rate application should apply to minutes where CPN is not passed. Neither the FCC's *Local Competition Order* nor the *ISP Remand Order* included such limitations. In addition, in § 6.2, GNAPs proposes changes that would effectively determine the nature of the call by the

originating carriers' local calling areas—a flawed approach that the Commission should reject for the all the reasons outlined above.

GNAPs' proposed changes to § 6.2 would also prohibit the receiving carrier from using CPN to classify traffic delivered by the other party for the purposes of determining the applicable traffic rate, and instead would leave such classification to the originating carrier, which has a financial incentive to classify all of its originating traffic to the lowest rate category. Obviously, use of CPN to classify traffic is more efficient and accurate than simply relying on the originating party to provide the classification.

GNAPs compounds these concerns by deleting in § 6.3 the right of either party to audit the traffic to determine whether the traffic classification is correct. As is discussed in more detail later, it is imperative that each party have the ability to audit the traffic of the other to determine whether the appropriate traffic rates are being applied to accurate traffic levels.

Verizon's Interconnection Attachment Section 7: GNAPs makes a number of inappropriate and unexplained edits in § 7 of the Interconnection Attachment. For example, GNAPs proposes to delete the qualifier "[e]xcept as expressly specified in this Agreement" from the statement in § 7.2 that no additional charges shall apply for the termination from the IP to the Customer of Reciprocal Compensation Traffic delivered to the Verizon-IP by GNAPs or the GNAPs-IP by Verizon. GNAPs' unexplained objection to this qualifying language is unclear given that the language does not add anything to that which is already "expressly specified in this Agreement." Moreover, there may, in fact, be other applicable charges. For example, in some instances a billing platform recovery charge is billed to recover the costs associated with recording the usage on two way trunks.

In § 7.3.3., moreover, GNAPs deletes the reference to calls originated on a 1+ presubscription or casual dialed call in the same inappropriate way as it did in the Glossary

*/definition of Toll Traffic. In § 7.3.4, GNAPs also incorrectly proposes to delete Verizon's explanation as to the type of its local calling areas which should govern whether a call constitutes reciprocal compensation traffic, in the same inappropriate manner as it does in the Glossary.

Finally, in § 7.4, GNAPs also would delete the requirement for symmetrical reciprocal compensation rates between the parties in § 7.4. By proposing to delete this Section, GNAPs is seeking the ability to charge Verizon more for reciprocal compensation than Verizon charges GNAPs. This proposal contravenes the FCC's requirement for symmetrical reciprocal compensation between carriers as described in 47 C.F.R. § 51.711. GNAPs has not explained why it warrants any exception to this general rule (*e.g.*, GNAPs has not submitted a cost study to the Commission under § 51.711(b)). Accordingly, its position should be rejected.

Verizon's Additional Service Attachment Section 5.1: GNAPs' edits to this Section are erroneous. First, and contrary to GNAPs' suggestion, voice information services (which are provided by third party service/content providers) are not limited to those where providers assess a fee, whether or not the fee appears on the calling party's telephone bill. Indeed, since Verizon may not bill for such services, many providers typically charge the calling party's credit card bill when assessing charges. Some providers do not even do that, opting to recoup their expenses instead through the sale of advertising (often 900 type services). GNAPs' edits, therefore, do not reflect industry practice in this area.

Second, for the purposes of this local interconnection agreement, voice information service traffic necessarily must be intraLATA (rather than exchange access) traffic. GNAPs' edits do not recognize this plain fact.

Third, and despite GNAPs' edits to the contrary, Voice Information Service Traffic is, like Internet traffic, information access traffic that is not subject to reciprocal compensation. On

the contrary, both Verizon and GNAPs recoup their costs via arrangements with the third party service/content provider.

Verizon's proposed contract language for all of the above-discussed Sections would effectively implement the *ISP Remand Order* and should be adopted.

ISSUE 6: Should Limitations Be Imposed Upon GNAPs Ability To Obtain Available Verizon Dark Fiber?

This issue has been resolved. [93]

ISSUE 7: Whether Two-Way Trunking Is Available To GNAPs' At GNAPs' Request?

(Verizon Proposed Interconnection Agreement, Interconnection Attachment, §§ 2.2.3, 2.4)

GNAPs' Position: Two-way trunking should be available to GNAPs at GNAPs' Request.

Verizon's Alleged Position: Two-way trunking will be available only upon mutual agreement of the Parties.

Verizon's Actual Position:

The main disagreement between the parties is whether the parties need to mutually agree on the terms and conditions relating to two-way trunking, or whether, as GNAPs seems to maintain, GNAPs can dictate those terms. Verizon agrees that, pursuant to 47 C.F.R. § 51.305(f), GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection. But the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them. Because two-way trunks present operational issues for Verizon's own network, it is imperative that Verizon have some say as to how this impact is assessed and handled. Verizon's proposal does not "mandate" that two-way trunks will be installed only upon mutual agreement. Instead, Verizon's contract language in

[93] Verizon notes that GNAPs has submitted a proposed Interconnection Agreement that contains competing language. As GNAPs is well aware, the parties have settled this issue and have agreed to adopt Verizon's proposed language as reflected in Exhibit B.

§ 2.2.3, 2.2.4, and 2.4 identifies operational areas the parties must address to achieve a workable interconnection arrangement.

For instance, in § 2.4.2, GNAPs deleted the requirement that both parties agree on the initial number of two-way trunks that the parties will use. Instead, GNAPs' edits would permit it to dictate to Verizon how many interconnection trunks will be deployed between the parties. Because two-way trunks carry both Verizon's and GNAPs' traffic on the same trunk group, this affects network performance and operation on each party's network. Thus, it is reasonable that GNAPs and Verizon should mutually agree on this initial arrangement. In Illinois, Verizon has reached similar agreements with a number of other CLECs with whom Verizon interconnects.

Many of GNAPs edits to the relevant two-way trunking language are also nonsensical. For example, in Verizon's proposed § 2.2.4, GNAPs added the phrase "originating party" to § 2.2.4(b). As in GNAPs' edits to Verizon's proposed § 2.4.11, this addition makes no sense. When the parties use two-way trunk groups, both GNAPs and Verizon "originate" and "terminate" traffic because both parties send traffic over two-way trunks. Thus, by inserting "originating party" it does not describe the parties with any specificity. Because GNAPs' proposals (1) ignore essential operational realities, and (2) are nonsensical, the Commission should reject GNAPs' provisions and adopt Verizon's terms for two-way trunks.

1. Contract Changes Proposed by GNAPs but not Discussed in GNAPs' Petition.

As with Issues 1 and 2 above, GNAPs submitted extensive contract changes to Verizon's interconnection attachment that raise other discrete matters over which the parties disagree. These matters cannot be resolved by merely resolving the open "policy" issue articulated by GNAPs in Issue 7. The Commission should reject GNAPs' proposed contract language because (i) GNAPs raised no issue, provided no justification for its proposed language, and failed to

explain Verizon's position in contravention of its duty as a Petitioner under § 252(b)(2) of the Act, and (ii) Verizon's proposals are reasonable and consistent with the law.

Verizon Glossary Section 2.95: The definition of "Trunk Side" is set forth in § 2.95 of the Glossary. GNAPs has not explained how Verizon's proposed definition of "Trunk Side" is restrictive, or unwarranted, or even how this definition relates to GNAPs' ability to use two-way trunks. Absent an explanation, Verizon has no basis for addressing GNAPs' concerns, and the Commission lacks a basis for adopting GNAPs' proposed changes.

Verizon Interconnection Attachment Section 2.2.5: GNAPs' unexplained changes to § 2.2.5 eliminate engineering design requirements that ensure network reliability for the operation of interconnection trunk groups and Verizon's tandem switches with the goal of avoiding premature tandem exhaust. If a tandem exhausts because of excessive CLEC traffic, it will compromise Verizon's ability to manage its network, to the detriment of Verizon's retail and wholesale customers.

Verizon's proposed § 2.2.5 also provides the carriers with the flexibility to mutually agree on the limit should the circumstances warrant it. GNAPs' edits, however, would allow it to circumvent Verizon's engineering practices and confuses Verizon's traffic routing and engineering practices with GNAPs' ability to select two-way trunks.

Verizon Interconnection Attachment Section 2.3: GNAPs also made extensive changes to § 2.3, Verizon's one-way trunking provisions, even though GNAPs maintains that it would prefer to use two-way interconnection trunks between it and Verizon. As with the deployment of two-way interconnection trunks, the parties need to mutually agree on the terms and conditions relating to the deployment of one-way trunks. Verizon's proposed §§ 2.2.3 and 2.3 recognize this operational reality.

GNAPs' edits to one-way trunk ordering responsibilities would appear to be inconsistent with its changes to the two-way trunking section and inconsistent with how Verizon currently handles one-way trunking with CLECs. GNAPs also struck § 2.3.1.3.1, which deals with disconnecting underutilized trunks. As addressed above, GNAPs' elimination of this section would provide GNAPs a more expensive form of interconnection with grades of service better than what Verizon provides itself and other CLECs. Moreover, GNAPs has completely struck, without explanation, all the terms and conditions for one-way trunks in §§ 2.3.2 *et seq.* as they relate to Verizon when it deploys a one-way trunk group to GNAPs. This wholesale deletion creates ambiguity and uncertainty between the parties.

Verizon Interconnection Attachment Section 2.4.4: By striking Verizon's proposed § 2.4.4 and inserting additional language, GNAPs refuses to provide Verizon with forecasts of traffic originating on Verizon's network and terminating on GNAPs' network to enable Verizon to effectively manage its network. Judging from the changes made to Verizon's proposed § 2.4.4 of its interconnection attachment, it appears that GNAPs wants to use trunk forecasts as a means to reserve facilities without paying for those facilities through firm service orders. In other jurisdictions, GNAPs provides Verizon with a forecast of its inbound and outbound traffic in accordance with Verizon's proposed § 2.4.4. GNAPs' edits would also require Verizon to provide GNAPs a forecast, which is contrary to the agreements GNAPs and Verizon have in other jurisdictions.

Verizon uses trunk forecasts from CLECs to assist Verizon in determining the timing and sizing of switch capacity additions. The customer information known only by GNAPs by far, has the greatest impact on the forecast for interconnection trunks that are required to carry calls from Verizon's network to GNAPs' network. For instance, if GNAPs targets customers who primarily receive calls, like ISPs, and GNAPs knows that most of those calls will originate from

Verizon's network, then only GNAPs can forecast the timing and magnitude of traffic that originates on Verizon's network. Obviously, GNAPs is in a better position to forecast its own growth. In order for Verizon to do a more effective job in managing its network, Verizon needs good faith, non-binding traffic forecasts from CLECs, including GNAPs.[94]

Verizon Interconnection Attachment, Sections 2.4.8, 2.4.9, 2.4.13, 2.4.14: GNAPs' changes in these sections would collectively and individually hold Verizon to unreasonably stringent trunking operational responsibilities and parameters. The modifications GNAPs makes to §§ 2.4.8 would require Verizon to provide GNAPs with a better grade of service than what Verizon provides to itself or to other CLECs. Also, since GNAPs, not Verizon, is primarily responsible for engineering the two-way trunk groups between the parties, it would be unfair to hold Verizon accountable for performance measures and penalties for these trunks. In effect, GNAPs' proposed § 2.4.13 could hold Verizon liable for performance penalties for blocking on trunk groups over which GNAPs has primary engineering responsibility. In addition, GNAPs' proposed edits to Verizon's § 2.4.14, would require Verizon to withdraw two-way traffic and install one-way interconnection trunks for GNAPs in thirty days. Verizon cannot possibly complete all the work necessary to make this conversion in thirty days. As with GNAPs' other proposed edits, it offers no reason why it should be accorded special treatment.

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[94] *See Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement and Petition of Greater Media Telephone, Inc. for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts*, Massachusetts Department of Telecommunications and Energy, D.T.E. 99-42/43, 99-52 at 88-89 (August 25, 1999) (holding that MediaOne should forecast interconnection-related products by wire center because this information is useful in deciding what additional facilities Bell Atlantic may need to engineer); *see also In re AT&T Communications of Midwest, Inc., Final Arbitration Decision on Remand*, 1998 WL 316248 *10, Iowa Utilities Board (rel. May 15, 1998) (holding that when U.S. West Communications is responsible for transport network planning, the CLECs should provide trunk forecast information to U.S. West because it is in all the carriers' and customers' best interests).

Verizon Interconnection Attachment Section 2.4.11: GNAPs' edits to Verizon's proposed § 2.4.11 are inappropriate and nonsensical. GNAPs has inserted the terms "originating party" and "terminating party" in this provision. As an initial matter, inserting these terms into the two-way trunking section makes no sense. On a two-way trunk, both parties originate and terminate traffic. Thus, in § 2.4.11 as proposed by GNAPs, both parties would submit access service requests ("ASRs") on one another for the same trunk group. These changes create uncertainty and are vague. They are also inconsistent with GNAPs' redline modifications to §§ 2.4.2 and 2.4.10—in these sections GNAPs is the only party that would submit ASRs.

Verizon Interconnection Attachment Section 2.4.12: GNAPs has eliminated provision that would enable Verizon to disconnect underutilized trunks that are operating under 60% utilization. Underutilized trunk groups inefficiently tie up capacity in Verizon's network. Verizon, however, will not disconnect an entire trunk group. By not permitting Verizon to disconnect some trunks from underutilized trunk groups, GNAPs would have a more expensive form of interconnection with a better grade of service than Verizon provides to itself and other CLECs.

In addition, if Verizon is unable to disconnect underutilized trunks, it cannot use these trunks to meet the needs of other carriers and customers. Without the right to disconnect excess trunk groups when they are significantly underutilized, Verizon will not be able to manage its network in an efficient manner. If surplus trunks are left in service for one carrier, this could have a negative impact on the quality of service provided by Verizon to all other carriers with whom it interconnects. Disconnecting underutilized trunk groups enables Verizon to maintain the integrity of its network for every carriers' and customers' benefit.

Verizon Interconnection Attachment Section 2.4.16: The recurring and non-recurring charges that Verizon seeks to recover from GNAPs in § 2.4.16 fairly compensate Verizon for its

costs while ensuring that GNAPs pays no more than its fair share of those costs. For recurring charges, Verizon proposes that the parties calculate a proportionate percentage of use ("PPU"). The PPU calculates the total number of minutes each party sends over a facility on which a two-way interconnection trunk rides. Based on the PPU, GNAPs will pay Verizon a monthly recurring charge equal to the percentage of use for that facility. For example, assume that GNAPs issues an ASR to Verizon to install a two-way trunk between the parties. Further assume that Verizon incurs $1,000 in monthly recurring costs to maintain the facility on Verizon's side of the GNAPs' IP—the financial demarcation point—and that 95% of the traffic over this trunk, or the PPU, is originated by Verizon to GNAPs. In accordance with § 2.4.16, Verizon would assess GNAPs $50 in monthly recurring charges because the PPU indicates that GNAPs only uses 5% of the two-way interconnection trunk it has ordered from Verizon.

For the non-recurring portion of § 2.4.16, Verizon proposes that when GNAPs orders a two-way trunk from Verizon, it pays for half of Verizon's non-recurring charges. Because GNAPs orders the two-way trunk from Verizon and Verizon must then install this trunk, Verizon supplies the service and incurs non-recurring costs for the work it performs on behalf of GNAPs. Nevertheless, Verizon only charges GNAPs half of its non-recurring costs because Verizon not only supplies the service, the two-way trunk and its installation, but Verizon uses the two-way trunk too. These non-recurring charges merely compensate work for Verizon that it would otherwise not have to recover but for the order placed by GNAPs for the two-way trunk.

ISSUE 8: Is It Appropriate To Incorporate By Reference Other Documents, Including Tariffs, Into The Agreement Instead of Fully Setting Out Those Provisions In The Agreement?

(Verizon Proposed Interconnection Agreement, General Terms and Conditions 1.1, 1.2, 1.3, 4.7, 6.5, 47; Additional Services Attachment §§ 9.1 and 9.2; Interconnection Attachment §§ 1, 2.1.3.3, 2.1.4, 2.1.6, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 9.2.2, 10.1, 10.6; Resale Attachment §§ 1, 2.1, 2.2.4, UNE Attachment § 1.1, 1.3.1, 1.7, 4.3, 4.7.2, 8.1, 12.11; Collocation § 1; Pricing Attachment §§ 1.5, 2.2.2)

GNAPs' Position: The four corners of the Agreement control any term or provision that affects the dealings of the Parties. Otherwise, Verizon may unilaterally amend the terms and conditions of the Agreement.

Verizon's Alleged Position: It is unclear whether Verizon will limit reference to outside documents, such as tariffs, to simple price references, without the unilateral ability to affect material terms of the agreement.

Verizon's Actual Position:

GNAPs has proposed to delete almost every tariff reference in the interconnection agreement. Apparently, GNAPs does not object to references to tariffs as a source of prices,[95] but argues that Verizon's proposal will allow Verizon the unilateral ability to affect material ***terms*** of the interconnection Agreement. GNAPs' objection is based on a misunderstanding of Verizon's proposed agreement and the tariff process.

1. GNAPs Misconstrues Verizon's Proposal.

GNAPs ignores or misapprehends Verizon's proposed § 1.2 in the General Terms and Conditions section, which establishes the parties' interconnection agreement as the governing document in the face of a conflict between the agreement and a tariff. Under Verizon's proposal, a tariff reference generally may *supplement* the agreement's terms and conditions, but not *alter* it with conflicting terms or conditions. In the event of conflicting terms and conditions, Verizon's

[95] *See* § 1.3 of the Pricing Attachment, which is an undisputed provision referencing tariffs as the source of charges for a service provided under the agreement. *See also* GNAPs' Petition at 27, ¶ 65.

proposal gives the interconnection agreement precedence.[96] Thus, the terms and conditions of the interconnection agreement would not be an "ever-moving target," as GNAPs contends.[97]

As to prices, GNAPs has already agreed to language in § 1.3 of the Pricing Attachment that makes applicable tariffs the source of prices for services provided under the agreement. Despite this agreement, GNAPs' proposed contract changes would "freeze" any current tariff prices, preventing any amendments or changes to tariff prices from becoming effective. This proposal should be rejected.

Verizon's proposal, to establish effective tariffs as the first source for applicable prices, ensures that its prices are set and updated in a manner that is efficient, consistent, fair, and non-discriminatory for all CLECs. Verizon's proposed contract provisions justifiably eliminate the arbitrage that would result from GNAPs' proposal locking Verizon into contract rates, but leaving GNAPs free to purchase from future tariffs should the tariff rates prove more favorable.

GNAPs' proposal raises the additional problem of potentially mooting the tariff process. Each carrier that opts into GNAPs' agreement would be given the same right to veto Verizon's tariffed rates by electing the interconnection agreement's rates. Even if GNAPs, or other carriers, participate in the Commission's review of Verizon's tariff filing, they could avoid the result by continuing to claim the benefit of frozen interconnection agreement rates.

If Verizon's tariff rates are allowed to go into effect pursuant to applicable law, then they should be the effective rates for all carriers on a fair and non-discriminatory basis. GNAPs should not be allowed to avoid changes in legally effective rates that it does not like. If a tariff rate is revised during the term of the agreement, Verizon's language ensures that the agreement remains up-to-date without the need for further amendment.

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[96] *See, e.g.*, § 1.2 of the General Terms and Conditions section.

[97] *See* GNAPs' Petition at 27, ¶ 64.

To the extent that products or services are not covered in a tariff, Verizon's proposed agreement contains a pricing schedule that addresses the recurring and non-recurring rates and charges for interconnection services, UNEs and the avoided cost discount for resale. Contrary to GNAPs' assertion that Verizon's proposal is open-ended,[98] Verizon accounts for the appropriate interplay between tariffs and interconnection agreements in a manner that is fair and efficient.

2. The Tariff Process is not Unilateral.

GNAPs incorrectly claims that the tariff process forecloses GNAPs' opportunity to raise concerns because it is allegedly "unilateral." When Verizon files a proposed tariff with the Commission, GNAPs has the opportunity to protest that tariff. And because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs need not review the details of every tariff filing for fear that it might contradict the terms and conditions of the interconnection agreement.

3. GNAPs Fails to Support its Proposed Contract Changes.

GNAPs has broadly challenged the appropriateness of referencing tariffs in the parties' interconnection agreement. However, GNAPs' Petition fails to specify many of the contract provisions and its rationale does not apply to many of the contract sections where it has deleted tariff references. GNAPs' failure to specifically address each section leaves many proposed contract changes unsupported. For these reasons alone, the Commission should reject GNAPs' proposed changes.

Below, Verizon describes the specific contract sections in which GNAPs has proposed deletion of a tariff reference:

[98] GNAPs' Petition at 26, ¶ 63.

General Terms and Conditions

Sections 1 (1.1 through 1.3) and 4.7: GNAPs' proposal to strike a reference to tariffs in these sections is discussed above.

Section 6.5: Verizon's reference to tariffs in this section ensures that its practice of requiring cash deposits or letters of credit is consistent for all carriers and with any practice sanctioned by the Commission.

Section 47: Verizon's reference to tariffs in this section ensures that GNAPs will enforce applicable restrictions on the use of Verizon's services. For example, if GNAPs purchases a retail telecommunications service for resale, restrictions on that service will only be articulated in Verizon's retail tariff. GNAPs should not evade its responsibility to ensure improper use of retail services by its end users by deleting reference to the only document that would contain them. The general concerns GNAPs discussed in connection with this issue do not apply to the reference in this section.

Additional Services Attachment

Sections 9.1 and 9.2: GNAPs does not specifically address its rationale for deleting references to tariffs in these sections dealing with GNAPs' access to Verizon's poles, ducts, and rights-of-way. Verizon's tariff references in these sections ensure that its practices for granting access to its poles, conduits and rights-of-way are consistent for all carriers and any Commission-sanctioned practices.

Interconnection Attachment

Sections 1, 2.1.3.3, 2.1.4, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, and 8.5.3: Verizon's references here ensure that the parties interconnect with one another in accordance with their respective tariffs when appropriate. For example, § 2.1.3.3 makes available entrance facilities to all carriers pursuant to Verizon's applicable access tariff. This ensures consistency for all

telecommunications carriers purchasing entrance facilities from Verizon. Moreover, because the parties may exchange and/or deliver exchange access traffic and other traffic that is not covered by the parties' interconnection agreement, the reference to the parties' respective tariffs properly indicates that the rates, terms and conditions for this traffic are addressed in their tariffs.

Section 2.1.6: GNAPs deleted the reference to its applicable tariffs in § 2.1.6. Maintaining this reference is appropriate because not all of its rates, terms and conditions may be contained in this interconnection agreement.

Sections 9.2.2, 10.1, and 10.6: GNAPs does not specifically address its rationale for deleting references to Verizon's applicable access tariffs, but striking them is inconsistent with the industry standard and applicable law. For instance, parties to an interconnection agreement refer to their applicable access tariffs in meet point billing arrangements because the "customer" is usually the toll provider not GNAPs or Verizon. In addition, when GNAPs purchases access toll connecting trunks for the transmission and routing of traffic between GNAPs' "local" customer and an IXC, it does so under Verizon's applicable access tariff because it is an access service. The reference to Verizon's access tariff is consistent with the FCC's *ISP Remand Order*, in which the FCC held that § 251(g) "preserved pre-Act regulatory treatment of all access services."[99] Because Verizon's access toll connecting trunks service is an "exchange service for such access to interexchange carriers," the reference to Verizon's applicable access tariff is appropriate.[100]

[99] *ISP Remand Order* ¶ 39.

[100] 47 U.S.C. § 251(g).

Collocation

Section 1: GNAPs' general objection to tariff references is particularly inappropriate because Verizon's rates, terms and conditions for collocation can only be found in Verizon's filed collocation tariff. The filed collocation tariff ensures that Verizon provides collocation to all carriers in a non-discriminatory manner.

ISSUE 9: Should Verizon's Performance Standards Language Incorporate A Provision Stating That If State Or Federal Performance Standards Are More Stringent Than The Federally Imposed Merger Performance Standards, The Parties Will Implement Those More Stringent Requirements?

The parties have resolved this issue.[101]

ISSUE 10: Should The Interconnection Agreement Require GNAPs To Obtain Excess Liability Insurance Coverage Of $10,000,000 And Require GNAPs To Adopt Specified Policy Forms?

(Verizon Proposed Interconnection Agreement, General Terms and Conditions § 21)

> **GNAPs' Position**: The interconnection Agreement may require GNAPs to obtain minimum insurance coverage, but these limits should be far lower than those contained in the current Template Agreement and should allow GNAPs to use an umbrella policy in lieu of more specific categories of insurance to meet Verizon 's reasonable insurance requirements.
>
> **Verizon's Alleged Position**: GNAPs must obtain excess liability insurance coverage of up to $10,000,000 and must provide insurance coverage in explicitly defined categories.
>
> ***Verizon's Actual Position:***

Verizon is required to enter into interconnection agreements with CLECs. In light of that requirement, it is reasonable for Verizon to seek protection of its network, personnel, and other assets in the event a CLEC has insufficient financial resources, as the FCC previously has

[101] Verizon notes that GNAPs has submitted a proposed Interconnection Agreement that contains competing language. As GNAPs is well aware, the parties have settled this issue and have agreed to adopt Verizon's proposed language as reflected in Exhibit B.

recognized.[102] GNAPs' proposed amendments to Verizon's insurance requirements would eliminate certain types of insurance and substantially lower insurance amounts contrary to controlling law.

The FCC has concluded that "LECs are justified in requiring interconnectors to carry a reasonable amount of liability insurance coverage," including automobile insurance, workers' compensation and employer liability insurance.[103] The FCC observed:

> [D]ue to the unique circumstances posed by physical collocation, we find that it is not unreasonable for LECs to require interconnectors to maintain a reasonable amount of general liability and excess liability insurance coverage to protect against occurrences that may potentially arise out of the physical collocation arrangement. We disagree with Teleport's argument that the physical collocation arrangement is the equivalent of adding a few racks of multiplexing equipment and therefore poses no additional risk to a central office. We find that the presence of interconnectors in the LECs' central office adds additional risk to the LECs' property and operations because the LECs do not have control over the interconnectors' equipment or the personnel that operate the equipment. In the absence of such control, we find that it is not unreasonable for LECs to require general liability insurance to protect against property damage to the LECs' equipment, personal injury to the LECs' employees, and losses to the LECs' customers because of service interruptions caused by interconnectors.[104]

With regard to insurance amount, the FCC found that "a LECs' requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average,"[105] which the FCC calculated as $21.15 million (in

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[102] *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, Second Report and Order*, rel. June 13, 1997, ¶¶ 343-55 ("*Second Report*").

[103] *Id.* at ¶ 345.

[104] *Id.*

[105] *Id.*

1997).[106] The aggregate amount of insurance Verizon seeks from GNAPs falls below this measure of reasonability.

GNAPs' amendments to Verizon's proposed insurance requirements should be rejected because Verizon's proposal is reasonable in light of the risks for which the insurance is procured. The highlights of Verizon's insurance provisions include:

- ***A requirement for GNAPs to maintain appropriate insurance and/or bonds during the term of the interconnection agreement.***
- ***Commercial general liability: $2,000,000.***
- ***Commercial motor vehicle liability insurance: $2,000,000.***
- ***Excess liability insurance (umbrella): $10,000,000.***
- ***Worker's compensation insurance as required by law and employer's liability insurance: $2,000,000.***
- ***All risk property insurance (full replacement cost) for GNAPs' real and personal property located at a collocation site or on Verizon premises, facilities, equipment or rights-of-way.***
- ***Deductibles, self-insured retentions or loss limits must be disclosed to Verizon.***
- ***GNAPs shall name Verizon as an additional insured.***
- ***GNAPs shall provide proof of insurance and report changes in insurance periodically.***
- ***GNAPs shall require contractors that will have access to Verizon premises or equipment to procure insurance.***

Verizon's insurance requirements impose reasonable, necessary and minimal requirements on GNAPs. They are not, as GNAPs argues, a "covert barrier to competition." GNAPs and Verizon operate in a highly volatile industry and in a society in which either Party could be held jointly or severally liable for the negligent or wrongful acts of the other. The interconnection agreement that will result from this proceeding, a facilities-based agreement,

[106] *Id.*

provides GNAPs the ability to collocate at a Verizon facility. As the FCC recognizes collocation particularly increases Verizon's risk and exposure to loss in many ways—for example: (i) risk of injury to its employees, (ii) possible damage or loss of its facilities and network, (iii) risk of fire or theft, (iv) risk of security breaches, and (v) possible interference with, or failure of, the network.

In § 20 of the General Terms and Conditions section, GNAPs agrees to indemnify Verizon. As a natural extension of the indemnification, Verizon's proposed § 21 requiring insurance provides the financial guarantee to support the promised indemnifications. Verizon's recent experience with CLEC bankruptcies reveals that insurance coverage is often the only source of recovery.

GNAPs' proposed insurance coverage is inadequate. For example, GNAPs proposes a limit of $1,000,000 on general commercial and excess liability coverage. In today's environment, many individuals have more than $1,000,000 coverage for liabilities associated with their residence and personal automobiles. Tort judgments in Illinois, including costs and legal fees, routinely exceed $1,000,000, making GNAPs' proposal woefully insufficient.

Moreover, GNAPs' proposal to impose mutual insurance requirements on Verizon throughout § 21 make no sense. First, Verizon maintains an extensive insurance program that is financially sound. Second, the risks associated with the interconnection agreement run primarily to Verizon. Other problems with GNAPs' proposed edits are highlighted below:

§ 21.1.2 GNAPs' proposal to delete the reference to vehicle insurance entirely is unreasonable. GNAPs should assure that GNAPs' vehicles used in proximity to Verizon's network are adequately insured and that excess coverage is provided for employees operating personal vehicles relating to the performance of the agreement.

§ 21.1.3 Excess liability insurance should be provided with limits of not less than $10,000,000, rather than the $1,000,000 limit GNAPs proposes, for exposures associated with Verizon's property and equipment, activities of GNAPs subcontractors or GNAPs-related activities on Verizon's premises.

§ 21.1.4 An employer's liability limit of $2,000,000, rather than GNAPs' $1,000,000 proposal, is standard in the industry and is particularly important because this is an area of increased claims activity.

§ 21.1.5 GNAPs should provide coverage for any real and personal property located on Verizon's premises. It is standard business practice for any company to adequately insure its property and that of its employees.

§ 21.3 In the insurance arena, the additional insured provision is used to appoint one party's insurance carrier as the primary contact and provide for the defense of both parties. This avoids insurance company "finger pointing" in the event of a loss. If both parties are named, each cancels out the other's insurance.

Because Verizon's proposed insurance requirements are reasonable and consistent with the law and GNAPs' recommendations are inadequate, the Commission should reject GNAPs' revisions to § 21 of the General Terms and Conditions section.

ISSUE 11: Should The Interconnection Agreement Include Language That Allows Verizon To Audit GNAPs' "Books, Records, Documents, Facilities And Systems?"

(Verizon Proposed Interconnection Agreement, General Terms and Conditions §§ 7 *et seq.*; Additional Services Attachment § 8.5.4; Interconnection Attachment §§ 6.3 and 10.13)

GNAPs' Position: The Agreement should not include language that allows either Party to audit the other Party's books, records, documents, facilities and systems.

Verizon's Alleged Position: Either Party may audit the other Party's books, records, documents, facilities and systems on an annual basis.

Verizon's Actual Position:

GNAPs proposes to delete entirely Verizon's proposed audit, leaving neither party with the ability to evaluate the accuracy of any bills. Once again, GNAPs' opposition to Verizon's proposed contract provisions is based on a misunderstanding of the proposal.

According to GNAPs, Verizon's proposed audit requirements would force GNAPs "to provide ***Verizon*** access to ***all*** of its 'books, records, documents, facilities and systems.'"[107]

[107] GNAPs' Petition at 30, ¶ 70 (emphasis added).

Inherent in this statement are three misconceptions. First, Verizon's proposal applies equally to both parties, not just GNAPs. Second, GNAPs would not be providing records to ***Verizon***, but pursuant to § 7.2, the "audit shall be performed by independent certified public accountants" selected and paid by the Auditing Party that are also acceptable to the Audited Party. GNAPs should not be concerned about providing competitively sensitive information, because § 7.2 requires the accountants to "execute an agreement with the Audited Party in a form reasonably acceptable to the Audited Party that protects the confidentiality of the information disclosed by the Audited Party to the accountants."

Third, the auditing ***accountant*** would not have access to ***all*** records, but only to those "necessary to assess the accuracy of the Audited Party's bills."[108] In short, Verizon's audit provisions are not the unreasonably broad mechanism that opens GNAPs' proprietary business records to Verizon, as GNAPs complains.

The audit provision in § 6.3 of the Interconnection Attachment is similarly limited to a review of "traffic data" to ensure that rates are being applied appropriately. Verizon's proposed § 8.5.4 of the Additional Services Attachment and 10.13 of the Interconnection Attachment, likewise, provide reasonably circumscribed audit rights. And, Verizon proposed § 7.4, which requires the auditing party to bear the expense of the audit, ensures that audits will not be requested without reasonable cause, while § 7.1 limits their frequency.

As Verizon's proposal makes clear, Verizon does not seek audit rights as a competitor of GNAPs, but as a customer. Without audit rights, Verizon will be forced to accept GNAPs' charges without any way to verify their accuracy or appropriateness. This is unacceptable from a business perspective. The supplier (billing party) reasonably should be expected to carry the

[108] Verizon proposed interconnection agreement, general terms and conditions §§ 7.1,7.3.

burden to justify its charges to the customer (the billed party). This is especially true in the context of auditing traffic data, which is embodied in Verizon's proposed § 6.3 of the Interconnection Attachment.

GNAPs claims that the "terms of the proposed Template Agreement are sufficiently clear and ensure compliance with the Agreement for the purposes of billing and record keeping purposes"[109] and points to "the right to pursue appropriate legal or equitable relief in the appropriate federal or state forum."[110] It is plainly unreasonable and bad public policy to expect a carrier to resort to litigation just to verify the appropriateness of a bill.

It is no mystery why GNAPs hopes to deprive Verizon of the audit rights it seeks. Verizon uncovered an illegal billing scheme GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation. *See* Verizon's Complaint filed in *New York Telephone Company, et al. v. Global NAPs, Inc., et al.,* No. 00 Civ. 2650 (FB) (RL), (E.D. N.Y.). When this history is viewed along with the finding by a California federal court that a GNAPs' principal "acted in bad faith, vexatiously, wantonly and for oppressive reasons"[111] and "perpetrated a fraud on the Court,"[112] GNAPs has no reasonable basis to assert that Verizon should simply have to trust in its reasonable performance under the interconnection agreement.

In short, Verizon's proposal is a reasonable and narrowly tailored tool to allow both parties, as customers of each other, to ensure the accuracy of each others' bill, as is common in the industry.

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[109] GNAPs' Petition at 30, ¶ 71.

[110] *Id.*

[111] August 31, 1995 Order of the United States District Court for the Central District of California in *CINEF/X, INC. v. Digital Equipment Corporation*, No. CV 94-4443 (SVW (JRx)) at 31, *See* August 31, 1995 Order of the United States District Court for the Central District of California in *CINEF/X, INC. v. Digital Equipment Corporation*, No. CV 94-4443 (SVW (JRx)) at 31.

[112] *Id.* at 31.

V. VERIZON'S SUPPLEMENTAL ISSUES

ISSUE 12: Should Verizon Be Permitted To Collocate At GNAPs Facilities In Order To Interconnect With GNAPs?

(Verizon Proposed Interconnection Agreement, Interconnection Attachment §§ 2.1.5 *et seq.*)

GNAPs' Position: No. GNAPs is not required to provide Verizon with collocation at GNAPs' facilities.

Verizon's Actual Position:

Verizon proposed contract language would give it the option to collocate at GNAPs' facilities. GNAPs' changes to § 2.1.5, however, indicate that it will only offer collocation "subject to GNAPs' sole discretion and only to the extent required by Applicable law."[113]

Verizon's proposal provides, in essence, that GNAPs (or any other CLEC interconnecting with Verizon) has a choice—if it will not allow Verizon to collocate at its facilities, it should be prohibited from charging Verizon distance-sensitive transport rates to get Verizon's traffic to those facilities. Verizon recognizes that § 251(c)(6) of the Act applies specifically to ILECs. Nothing in the Act, however, prohibits the Commission from allowing Verizon to interconnect with the CLECs via a collocation arrangement at their premises. By preventing Verizon from doing so, GNAPs would limit Verizon's interconnection choices with GNAPs. Furthermore, pursuant to GNAPs' proposals, all of the interconnection locations are determined by GNAPs.[114] This gives GNAPs every means available to minimize its own expenses and maximize Verizon's. It is thus reasonable to impose some logical limits on GNAPs' discretion, either

[113] GNAPs proposed interconnection agreement, interconnection attachment § 2.1.5.1. GNAPs' modifications to § 2.1.5 of the Interconnection Attachment are inconsistent with § 2 of the Collocation Attachment, which permits Verizon to collocate at GNAPs' facilities.

[114] *See* GNAPs proposed interconnection agreement, interconnection attachment, §§ 2.1 - 2.1.5.

through the VGRIP proposal discussed in Issues 1 and 2, or through rules on collocation and distance sensitive transport rates.

Fairness dictates that Verizon have comparable choices to those available to GNAPs. If the GNAPs contract proposals are adopted, however, Verizon would be financially responsible for delivering its originated traffic to distant points within the LATA. Unlike the choices Verizon provides GNAPs, GNAPs would prohibit Verizon from delivering its originated traffic to multiple points on the network by precluding Verizon from collocating at GNAPs' premises. In addition, if Verizon cannot interconnect with GNAPs via a collocation arrangement, Verizon cannot self-provision the transport to the distant GNAPs switch, and then Verizon must purchase distance-sensitive transport from GNAPs (or a third-party that GNAPs does allow to collocate). These arrangements place Verizon at the mercy of GNAPs when Verizon delivers its originating traffic.

ISSUE 13: Should GNAPs Be Permitted to Avoid The Effectiveness Of Any Unstayed Legislative, Judicial, Regulatory Or Other Governmental Decision, Order, Determination Or Action?

(Verizon proposed interconnection agreement, General Terms and Conditions § 4.7)

> **GNAPs' Position**: Yes. Even if a legislative, judicial, regulatory or other governmental decision, order, determination, or action has not been stayed, GNAPs believes the agreement should allow the parties to avoid implementation until appeals are exhausted.

Verizon's Actual Position:

Consistent with Verizon's general approach to make "applicable law" the cornerstone of its proposed interconnection agreement, Verizon's proposed § 4.7 of the General Terms and Conditions section is the mechanism that ensures the parties' rights and obligations change with a change in law. GNAPs proposes edits that would delay implementation of a change of law

until appeals are exhausted, even if the change of law is not subject to a stay.[115] GNAPs improperly presumes that the change will be reversed or nullified and seeks to protect the status quo when the law does not, absent a stay. Pursuant to Verizon's proposal, if the change in law is effective, the parties' agreement must give it effect rather than predict the result of further proceedings or substitute their judgment for that of a governmental decision-maker who chose not to grant a stay.

In another proposed edit, GNAPs seeks to ensure that any discontinuance of service, payment, or benefit is "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier."[116] GNAPs' proposal is superfluous. The parties have agreed that "Verizon will provide thirty (30) days prior written notice to GNAPs of any such discontinuance of a Service, unless a different notice ***period*** or ***different conditions*** are specified in this Agreement . . . or ***Applicable Law*** for termination of such ***Service in which event such specified period and/or conditions shall apply***."[117]

It is critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to so under applicable law. In such case, Verizon will comply fully with any legal requirements governing the timing or other procedures relating to discontinuance of the service or benefit. Accordingly, the Commission should adopt Verizon's proposed § 4.7.

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[115] In § 4.7 of the General Terms and Conditions section, GNAPs proposes to add the underlined phrase: "Notwithstanding anything in this Agreement to the contrary, if, as a result of <u>any final and non-appealable</u> legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, . . ."

[116] *See* GNAPs' proposed § 4.7 of the General Terms and Conditions section.

[117] § 4.7 of the General Terms and Conditions section (emphasis added).

ISSUE 14: Should GNAPs Be Permitted To Insert Itself Into Verizon's Network Management Or Contractually Eviscerate The "Necessary And Impair" Analysis to Prospectively Gain Access To Network Elements That Have Not Yet Been Ordered Unbundled?

(Verizon proposed interconnection agreement, General Terms and Conditions § 42)

GNAPs' Position: Yes.

***Verizon's Actual Position**:*

Section 42 of Verizon's proposed contract recognizes Verizon's right to "deploy, upgrade, migrate and maintain its network at its discretion" and preserves Verizon's right to deploy fiber throughout its network. GNAPs, however, interjects contract language that would effectively give GNAPs access to "all" of Verizon's "next generation technology."[118] GNAPs' undefined term, "next generation technology," is vague and should not be included in the parties' contract. It is also unclear whether GNAPs seeks interconnection with the network or access to a specific element. GNAPs appears to assume that "applicable law" requires "reasonable and non-discriminatory access to ***all*** next generation technology for the purpose of providing telecommunications services."[119] Applicable law, however, only requires reasonable and nondiscriminatory interconnection to Verizon's network and to items that have been declared to be UNEs. Verizon's § 42 states that it will provide interconnection and UNEs to the extent required by applicable law.

The Commission should reject GNAPs' overreaching proposal as creating unnecessary ambiguity.

[118] § 42 of GNAPs' proposed contract.

[119] *Id.*

ISSUE 15: When GNAPs Orders Trunks to Connect its Customers From its Switch Through Verizon's Tandem to the IXC That Subtends That Verizon Tandem, Should GNAPs Comply With Verizon's Ordering Requirements For Access Toll Connecting Trunks?

(Verizon Proposed Interconnection Agreement, Interconnection Attachment § 9.2)

GNAPs' Position: No. GNAPs refuses to order access toll connecting trunks from Verizon in the manner described in Verizon's proposed interconnection agreement, Interconnection Attachment § 9.2.

***Verizon's Actual Position**:*

In § 9.2, GNAPs' additions and deletions appear to violate the routing and tandem subtending arrangements contained in the LERG. Verizon does not understand what GNAPs is attempting to accomplish by deleting these provisions. Access toll connecting trunk groups connect GNAPs' customers from its switch through Verizon's tandem to the IXC that chooses to connect to that tandem. Thus, the traffic that rides over these trunks is exchange access traffic. Section 9.2 describes the ordering process that GNAPs uses when it purchases access toll connecting trunks from Verizon.

When GNAPs does purchase these trunks from Verizon, it does so pursuant to Verizon's access tariff because this traffic is not "local" and reciprocal compensation does not apply to it. The service Verizon provides to GNAPs is exchange access and, thus, § 251(g) of the Act applies and Verizon is entitled to charge access rates.[120] Verizon's position is also consistent with the FCC's *ISP Remand Order.* There, the FCC held that § 251(g) "preserved pre-Act regulatory treatment of all access services."[121] As described above, access toll connecting trunks are an "exchange service for such access to interexchange carriers."[122] Accordingly, Verizon's

[120] *See* 47 U.S.C. § 251(g); *CompTel v. Federal Communications Comm'n,* 117 F.3d 1068, 1072 (8th Cir. 1997), *aff'd in part, rev'd in part, AT&T Corp. v. Iowa Utilities Bd.,* 525 U.S. 366 (1999); *ISP Remand Order* at ¶ 39.

[121] *ISP Remand Order* ¶ 39.

[122] 47 U.S.C. § 251(g).

access tariffs govern the provisioning of this service, and the references to Verizon's access tariffs are appropriate.

ISSUE 16: Should Verizon Be Required To Accept GNAPs' Changes To The Definition Of "Trunk Side"?

(Verizon Proposed Interconnection Agreement, Glossary § 2.95)

GNAPs' Position: Yes.

Verizon's Actual Position:

Verizon does not understand what GNAPs is attempting to accomplish with its edits to the definition of "Trunk Side." In its Petition, GNAPs alleged that the Commission can implement GNAPs' definition for "Trunk Side" by finding in GNAPs' favor on Issue 7. The changes GNAPs makes to this definition, however, are not related to GNAPs' ability to use two-way trunks.

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Respectfully submitted,
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